MISSISSIPPI CODE 1972
Annotated

2022 ADVANCE CODE SERVICE

Pamphlet Number 3
June 2022

This pamphlet updates the 2021 Cumulative Supplement.

Contains statutory changes made during the 2021 Regular Session.

Prepared by the Editorial Staff
of the Publisher

QUESTIONS ABOUT THIS PUBLICATION?

For EDITORIAL QUESTIONS concerning this publication, or REPRINT PERMISSION, please call:
800-833-9844

For CUSTOMER SERVICE ASSISTANCE concerning replacement pages, shipments, billing or other matters please call:

Customer Service Department at	800-833-9844
Outside the United States and Canada	518-421-3000
FAX	518-421-3854

For INFORMATION ON OTHER MATTHEW BENDER PUBLICATIONS, please call:

Your account manager or	800-223-1940
Outside the United States and Canada	518-487-3000

Copyright © 2022

by

THE STATE OF MISSISSIPPI

All rights reserved.

LexisNexis and the Knowledge Burst logo are registered trademarks, and Michie is a trademark of Reed Elsevier Properties, Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties, Inc.

ISBN 978-0-3271-1786-5

LexisNexis®

Matthew Bender & Company, Inc.

9443 Springboro Pike, Miamisburg, OH 45342

www.lexisnexis.com

(Pub. 44620)

QUESTIONS ABOUT THIS PUBLICATION?

For EDITORIAL QUESTIONS concerning this publication, or REPRINT PERMISSION, please call:
800-833-9844

For CUSTOMER SERVICE ASSISTANCE concerning replacement pages, shipments, billing or other matters please call:

Customer Service Department at: 800-833-9844
Outside the United States and Canada: 518-487-3000
FAX: 518-487-3843

For INFORMATION ON OTHER MATTHEW BENDER PUBLICATIONS, please call:

Your account manager or: 800-223-1940
Outside the United States and Canada: 518-487-3000

Copyright © 2022

by

THE STATE OF MISSISSIPPI

All rights reserved

LexisNexis and the Knowledge Burst logo are registered trademarks, and Michie is a trademark of Reed Elsevier Properties, Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties, Inc.

ISBN 978-0-3271-1786-5

Matthew Bender & Company, Inc.

9443 Springboro Pike, Miamisburg, OH 45342

www.lexisnexis.com

PREFACE

Use of Advance Code Service.

The 2022 Advance Code Service ensures that your Mississippi Code of 1972 Annotated is always as current as possible by providing Judicial Decision notes, Attorney General Opinions, Ethics Opinions, research references, and references to law review articles. The ACS may also include changes to statutory provisions, and editorial comments. It ships three times a year, in the period between annual Code supplement pamphlet shipments. Advance Code Service pamphlets are cumulative and may be discarded or recycled upon receipt of later pamphlets.

Format.

Material in the Advance Code Service follows the structure of the Mississippi Code of 1972 Annotated and should be used in conjunction with the Code and its 2021 Supplement.

Annotations.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

In addition, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PREFACE

Information, suggestions, comments, and questions.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll free at (800) 833-9844, fax us toll free at (800) 643-1280, email us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342.

June 2022 LexisNexis

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENTS

AMENDMENT I

FREEDOM OF RELIGION, SPEECH AND PRESS; PEACEFUL ASSEMBLAGE; PETITION OF GRIEVANCES

3. Freedom of speech and press.

Miss. Code Ann. § 97-45-17 violated the First Amendment because it was uncon- sti- tutionally overbroad. Specifically, the stat- ute purported to criminalize any communi- cation, whether true or untrue, that was intended to cause injury to any person, and since it did not define injury, the statute thus criminalized a substantial amount of protected speech, such as core political speech, speech about public figures, and offensive parodies. Edwards v. State, 294 So. 3d 671, 2020 Miss. App. LEXIS 117 (Miss. Ct. App. 2020).

AMENDMENT II

RIGHT TO BEAR ARMS

JUDICIAL DECISIONS

123. Schools and education.

Higher Education Act of 1965, 20 U.S.C.S. § 1098g, did not contemplate the allegations within the State's complaint against a student loan servicer or have any preemptive effect on the State's claims because the State's complaint alleged multiple instances of the servicer holding itself out to be working in the consumers' best interest. Navient Corp. v. State ex rel. Fitch, 313 So. 3d 1034, 2021 Miss. LEXIS 78 (Miss. 2021).

AMENDMENT VI

JURY TRIAL FOR CRIMES AND PROCEDURAL RIGHTS

JUDICIAL DECISIONS

ANALYSIS

87. Assistance of counsel - In general.
110. ——Conflicts of interest, assistance of counsel.
115. —Trial strategy rather than ineffectiveness of counsel, assistance of counsel.
117. —Inadequate preparation for trial as ineffectiveness of counsel, assistance of counsel.
122. —Failure to object to evidence as ineffectiveness of counsel, assistance of counsel.
126. —Post-conviction proceedings, assistance of counsel. Sentencing phase procedures as indicative of ineffectiveness of counsel, assistance of counsel.
133. —Post-conviction proceedings, assistance of counsel.

110. —Conflicts of interest, assistance of counsel.

Any claim as to an attorney's conflict of interest could have been raised before the trial judge, in the direct appeal, or in the first post-conviction petition, and thus,

the issue was waived; petitioner pointed to nothing in the record that an attorney who had been appointed to represent an inmate filed any pleading or attended any court proceeding on his behalf, and he was also represented by an unconflicted attorney during the brief period of that attorney's appointment. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020), op. withdrawn, 306 So. 3d 719, 2020 Miss. LEXIS 489 (Miss. 2020).

115. —Trial strategy rather than ineffectiveness of counsel, assistance of counsel.

Petitioner's claim that trial counsel were ineffective for failing to prepare an inmate's testimony failed on the merits because the decision not to cross-examine the inmate was defensible trial strategy, especially when the marginal benefit of any questioning about the jailhouse record was considered; petitioner did not show that the trial attorneys' performance was deficient, and he did not show prejudice. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020), op. withdrawn, 306 So. 3d 719, 2020 Miss. LEXIS 489 (Miss. 2020).

Trial counsel was not ineffective for failing to object to certain parts of the prosecutor's closing argument because there was no error in the argument; the prosecutor did not improperly comment on the victim or the victim's family, and thus, any objection would have been fruitless. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020), op. withdrawn, 306 So. 3d 719, 2020 Miss. LEXIS 489 (Miss. 2020).

117. —Inadequate preparation for trial as ineffectiveness of counsel, assistance of counsel.

Petitioner failed to show that counsel's performance was deficient for not interviewing witnesses because the affidavits were largely hearsay; counsel was not ineffective for failing to investigate a witness's reputation because trial counsel sufficiently showed that the witness was not reputable, and calling additional witnesses to attack Walker's reputation would have been unnecessarily repetitive. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020), op. withdrawn, 306 So. 3d 719, 2020 Miss. LEXIS 489 (Miss. 2020).

122. —Failure to object to evidence as ineffectiveness of counsel, assistance of counsel.

Counsel's performance was not deficient for failure to object to notes purportedly written by a witness to petition while they were in jail because other letters between petitioner and the witness had already been admitted; defense counsel did in fact object to the introduction of the first note, but it was admitted over the objection. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020), op. withdrawn, 306 So. 3d 719, 2020 Miss. LEXIS 489 (Miss. 2020).

126. —Sentencing phase procedures as indicative of ineffectiveness of counsel, assistance of counsel.

Petitioner did not show that his trial attorneys were ineffective in their presentation of mitigation evidence at the sentencing phase because much of the information submitted by affidavit regarding petitioner's upbringing was in fact discussed at the hearing; some of the allegations were contradicted by other testimony. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020), op. withdrawn, 306 So. 3d 719, 2020 Miss. LEXIS 489 (Miss. 2020).

133. —Post-conviction proceedings, assistance of counsel.

Petitioner's ineffective-assistance-of-post-conviction-counsel claim failed to meet the second Strickland prong because a thorough review of all of the claims raised in the successive petition revealed none that had merit; thus, even if post-conviction counsel had raised any or all of the claims, the result would have been the same. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020), op. withdrawn, 306 So. 3d 719, 2020 Miss. LEXIS 489 (Miss. 2020).

THE CONSTITUTION OF THE STATE OF MISSISSIPPI

ARTICLE 3.

BILL OF RIGHTS.

§ 23. Searches and seizures.

JUDICIAL DECISIONS

2. Searches and seizures –In general.

11. – – Property or premises protected, searches and seizures.

Miss. Const. art. III, § 23, protects the entirety of a person's property, not just the house and curtilage. Okhuysen v. City of Starkville, 333 So. 3d 573, 2022 Miss. App. LEXIS 17 (Miss. Ct. App. 2022).

In a case in which a city's board of alderman found appellant's property to be in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community, the appellate court held that the exclusionary rule applied. There was a direct connection between the unconstitutional search and the attempted use of the evidence. Okhuysen v. City of Starkville, 333 So. 3d 573, 2022 Miss. App. LEXIS 17 (Miss. Ct. App. 2022).

§ 26. Rights of accused; state grand jury proceedings.

JUDICIAL DECISIONS

ANALYSIS

39. Speedy trial – In general.
44. – – Factors considered, speedy trial.
124. Right of accused to be heard.
125. Right to counsel – In general.
131. – – Counsel of defendant's choosing, right to counsel.

39. Speedy trial – In general.

44. – – Factors considered, speedy trial.

Trial court did not err by finding that defendant's constitutional right to a speedy trial was not violated, even though there was a delay of more than 40 months, because defendant failed to show that he was prejudiced, as he failed to produce any corroborating evidence for the exculpatory testimony a deceased witness would have allegedly provided and the exculpatory inference the witness allegedly could have given was directly contradicted by defendant's signed statement. Berryman v. State, — So. 3d —, 2021 Miss. App. LEXIS 460 (Miss. Ct. App. Nov. 9, 2021).

124. Right of accused to be heard.

Defendant was not denied his right to testify under Miss. Const. art. 3, § 26 because he was counseled that he had the right to testify and chose not to after being advised that doing so might subject him to cross-examination and a possible witness tampering charge. Strickland v. State, 309 So. 3d 1090, 2020 Miss. App. LEXIS 371 (Miss. Ct. App. 2020), cert. denied, 309 So. 3d 451, 2021 Miss. LEXIS 46 (Miss. 2021).

125. Right to counsel – In general.

131. – – Counsel of defendant's choosing, right to counsel.

Defendant was not denied the right to counsel of choice when defendant's out-of-state counsel was prohibited from further questioning witnesses after the trial court became concerned that counsel had violated the rules of discovery, attempted to circumvent the court's prior ruling, and

had repeatedly challenged the court's rulings during trial. Furthermore, the out-of-state counsel was permitted to sit at counsel table and assist in-state co-counsel during the remainder of the trial, and nothing prohibited defendant from meeting with counsel. Copes v. State, — So. 3d —, 2021 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 2, 2021), aff'd, 333 So. 3d 1, 2022 Miss. LEXIS 37 (Miss. 2022).

§ 31. Trial by jury.

JUDICIAL DECISIONS

4. Powers and duties of the court.

Nothing justified the trial judge's failure to comply with the statute, which provided that a judge was to decide whether to excuse an individual from jury service; here, the clerk and court administrator unilaterally excused approximately 30 percent of potential jurors, and they testified that they were the ones to handle potential juror excuses. There should be no doubt that such violations may be a basis for grounds for appeal, but relief must be sought before the jury is impaneled and sworn. Hyundai Motor Am. v. Hutton, — So. 3d —, 2021 Miss. LEXIS 256 (Miss. 2021).2021 Miss. LEXIS 256.

TITLE 9.

COURTS

CHAPTER 1.

PROVISIONS COMMON TO COURTS

GENERAL PROVISIONS

§ 9-1-41. Reasonableness of attorneys' fees; evidence.

JUDICIAL DECISIONS

2. Application.

Attorney fee award to father was affirmed; mother's repeated denials of visitation forced father to file successive contempt petitions, and an award of $ 2,400 for litigating three contempt petitions was not unreasonable. Savell v. Manning, 325 So. 3d 1208, 2021 Miss. App. LEXIS 356 (Miss. Ct. App. 2021).

§ 9-1-43. Limit on compensation of chancery clerks and circuit clerks and their related employees; liability on bonds; chancery court clerk clearing accounts; circuit court clerk clearing accounts; journals and receipts; punishment for failure to deposit funds.

JUDICIAL DECISIONS

1. In general.

There was no error in requiring the circuit clerk to continue to collect and account for the intervention-court participation fees as criminal fines and fees because since the intervention court was an "adult felony intervention court," the intervention court was criminal; therefore, fees obtained during intervention-court proceedings are criminal fees, and once a court orders a fine or fee in a criminal case, it falls to the circuit clerk's office to collect that fine or fee. Thompson v. Desoto Cty. Intervention Court, — So. 3d —, 2022 Miss. LEXIS 118 (Miss. May 5, 2022).

CHAPTER 23.

INTERVENTION COURTS

§ 9-23-3. Legislative intent.

JUDICIAL DECISIONS

ANALYSIS

1. Transfer to Drug Court.
2. Construction.

1. Transfer to Drug Court.

There was no error in requiring the circuit clerk to continue to collect and account for the intervention-court partici-

pation fees as criminal fines and fees because since the intervention court was an "adult felony intervention court," the intervention court was criminal; therefore, fees obtained during intervention-court proceedings are criminal fees, and once a court orders a fine or fee in a criminal case, it falls to the circuit clerk's office to collect that fine or fee. Thompson v. Desoto Cty. Intervention Court, — So. 3d —, 2022 Miss. LEXIS 118 (Miss. May 5, 2022).

2. Construction.

Statutory goals of intervention-courts clearly indicate that the role of intervention courts is to deal with criminal behavior through restorative justice. Thompson v. Desoto Cty. Intervention Court, — So. 3d —, 2022 Miss. LEXIS 118 (Miss. May 5, 2022).

§ 9-23-11. Uniform certification process for intervention and certain other courts; minimum standards for intervention court operation; collection and reporting of certain data.

JUDICIAL DECISIONS

1. Fees.

There was no error in requiring the circuit clerk to continue to collect and account for the intervention-court participation fees as criminal fines and fees because since the intervention court was an "adult felony intervention court," the intervention court was criminal; therefore, fees obtained during intervention-court proceedings are criminal fees, and once a court orders a fine or fee in a criminal case, it falls to the circuit clerk's office to collect that fine or fee. Thompson v. Desoto Cty. Intervention Court, — So. 3d —, 2022 Miss. LEXIS 118 (Miss. May 5, 2022).

§ 9-23-19. Funding for intervention courts.

JUDICIAL DECISIONS

1. Fees.

There was no error in requiring the circuit clerk to continue to collect and account for the intervention-court participation fees as criminal fines and fees because since the intervention court was an "adult felony intervention court," the intervention court was criminal; therefore, fees obtained during intervention-court proceedings are criminal fees, and once a court orders a fine or fee in a criminal case, it falls to the circuit clerk's office to collect that fine or fee. Thompson v. Desoto Cty. Intervention Court, — So. 3d —, 2022 Miss. LEXIS 118 (Miss. May 5, 2022).

§ 9-23-23. Successful completion of intervention court requirements may result in expunction of criminal record.

JUDICIAL DECISIONS

1. Fees.

There was no error in requiring the circuit clerk to continue to collect and account for the intervention-court participation fees as criminal fines and fees because since the intervention court was an "adult felony intervention court," the intervention court was criminal; therefore, fees obtained during intervention-court proceedings are criminal fees, and

once a court orders a fine or fee in a criminal case, it falls to the circuit clerk's office to collect that fine or fee. Thompson v. Desoto Cty. Intervention Court, — So. 3d —, 2022 Miss. LEXIS 118 (Miss. May 5, 2022).

DRUG COURT FUND

§ 9-23-51. Drug Court Fund created; purpose; distribution of monies from fund; fund to be a continuing fund; components of fund.

JUDICIAL DECISIONS

1. Fees.

There was no error in requiring the circuit clerk to continue to collect and account for the intervention-court participation fees as criminal fines and fees because since the intervention court was an "adult felony intervention court," the intervention court was criminal; therefore, fees obtained during intervention-court proceedings are criminal fees, and once a court orders a fine or fee in a criminal case, it falls to the circuit clerk's office to collect that fine or fee. Thompson v. Desoto Cty. Intervention Court, — So. 3d —, 2022 Miss. LEXIS 118 (Miss. May 5, 2022).

TITLE 11.

CIVIL PRACTICE AND PROCEDURE

CHAPTER 1.

PRACTICE AND PROCEDURE PROVISIONS COMMON TO COURTS

§ 11-1-58. Certificate of consultation required in medical malpractice actions; exceptions.

JUDICIAL DECISIONS

4. Illustrative cases.

Because a patient failed to produce the required expert testimony/affidavit, the trial court did not err in granting summary judgment in favor of medical providers; in his initial motion to continue the summary judgment proceedings, the patient identified a doctor as an expert but failed to produce an affidavit of his expected testimony. Berry v. Holbrook, 331 So. 3d 47, 2021 Miss. App. LEXIS 388 (Miss. Ct. App. 2021).

§ 11-1-60. Limitation on noneconomic damages in medical malpractice actions; definitions.

JUDICIAL DECISIONS

2. Applicaton.

In a medical malpractice case, the trial court erred by reducing the jury's noneconomic-damages award from $2,538,322 to $500,000 pursuant to Miss. Code Ann. § 11-1-60(2)(a) because the action was filed before September 1, 2004, the date the amended version of § 11-1-60(2)(a) went into effect. Weber v. Est. of Hill, — So. 3d —, 2021 Miss. LEXIS 367 (Miss. Dec. 16, 2021).

§ 11-1-65. Punitive damages; limitations.

JUDICIAL DECISIONS

ANALYSIS

4. Availability.
9. Attorney's fees.
10. Appeal.

4. Availability.

Plaintiff's constitutional challenge to the punitive-damages cap was procedurally barred where plaintiff raised the constitutionality of the cap for the first time on appeal. Cascio v. Cascio Invs., LLC, 327 So. 3d 59, 2021 Miss. LEXIS 232 (Miss. 2021).

Given the documentation and descriptions of the egregious condition of the residence which the tenant rented from the landlord—and of the landlord's continued neglect—substantial evidence supported an award of punitive damages. Gordon v. Dickerson, — So. 3d —, 2021 Miss. App. LEXIS 378 (Miss. Ct. App. Sept. 14, 2021).

9. Attorney's fees.

Chancellor did not err in awarding attorney's fees to the adjoining property owners in lieu of punitive damages because the parcel owner had removed or defaced boundary markers, conveyed the

disputed land to his minor granddaughter, and erected a fence and gates around the property. Cronier v. ALR Partners L.P., 309 So. 3d 556, 2020 Miss. App. LEXIS 67 (Miss. Ct. App.), cert. denied, 302 So. 3d 645, 2020 Miss. LEXIS 382 (Miss. 2020), cert. denied, 302 So. 3d 645, 2020 Miss. LEXIS 381 (Miss. 2020).

10. Appeal.

Any challenges by a landlord as to the amount of the award of punitive damages to the tenant was waived on appeal because neither party presented at trial evidence of the landlord's net worth. Gordon v. Dickerson, — So. 3d —, 2021 Miss. App. LEXIS 378 (Miss. Ct. App. Sept. 14, 2021).

CHAPTER 7.

PRACTICE AND PROCEDURE IN CIRCUIT COURTS

IN GENERAL

§ 11-7-191. Enrolled judgment as lien.

JUDICIAL DECISIONS

3. Property subject to lien.

Had the clerk provided notice to the builder, it almost certainly would have protected its judgment and bid on the property at the tax sale or redeemed the property after the tax sale, but the builder never received notice; the chancellor fashioned an equitable remedy for the builder by setting aside the tax sale and extending the builder's redemption period. HL&C Marion, LLC v. Dima Homes, Inc., — So. 3d —, 2021 Miss. App. LEXIS 449 (Miss. Ct. App. Nov. 2, 2021).

CHAPTER 11.

VENUE OF ACTIONS

IN GENERAL

§ 11-11-3. County in which to commence civil actions; dismissal of actions more properly heard in another forum; transfer of action to proper county; factors determining grant of motion to dismiss or transfer.

JUDICIAL DECISIONS

ANALYSIS

2. Construction and application generally.
4. Venue where defendant resides or is found.
5. Venue where acts or substantial event occurred.

2. Construction and application generally.

In a dispute involving the proceeds of a homeowner's insurance policy following a house fire, the judgment in favor of the insureds was reversed because there was no basis for venue in Jasper County as no loss occurred there, no insurance repre-

sentative did anything in that county that could be considered a substantial act or event, and the receipt of information from the insurer by the insureds in that county did not give rise to venue. Allstate Ins. Co. v. Millsaps, 296 So. 3d 163, 2020 Miss. App. LEXIS 166 (Miss. Ct. App. 2020).

4. Venue where defendant resides or is found.

Circuit court abused its discretion in denying defendant's motion to transfer venue because the actual physical location where defendant conducted its business was in Madison County, and that was the appropriate venue according to Miss. Code Ann. § 11-11-3(1)(a)(i) rather than a county where defendant's outside certified public accountant was located and where none of the events causing the alleged injuries occurred. Weeks, Inc. v. Lewis, — So. 3d —, 2022 Miss. LEXIS 83 (Miss. Mar. 24, 2022).

5. Venue where acts or substantial event occurred.

In ex-husband's action alleging a conspiracy to seize his funds after a prior divorce judgment, a trial court improperly transferred venue because service of writs of garnishment was a substantial act in furtherance of the alleged conspiracy, so it was a permissible venue for a plaintiff to choose under the statute. Carson v. Linley, 292 So. 3d 212, 2020 Miss. LEXIS 73 (Miss. 2020).

CHAPTER 15.

ARBITRATION AND AWARD

ARBITRATION OF CONTROVERSIES ARISING FROM CONSTRUCTION CONTRACTS AND RELATED AGREEMENTS

§ 11-15-101. Agreements to which arbitration provisions apply.

JUDICIAL DECISIONS

1. In general.

While the construction arbitration statutes clearly aim to encourage arbitration and fill in details when the parties clearly agreed to arbitrate, thus enforcing a valid contractual obligation to arbitrate much like the Federal Arbitration Act, nothing in the statutes indicates a legislative intent to completely supplant the right to contract. Hillhouse v. Chris Cook Constr., LLC, 325 So. 3d 646, 2021 Miss. LEXIS 264 (Miss. 2021).

§ 11-15-103. Agreements to submit controversies to arbitration; refusal of binding arbitration provisions in public contracts.

JUDICIAL DECISIONS

1. In general.

Because the arbitration provision in homeowners' agreement with a contractor unequivocally required use of an unavailable forum, and because that forum was unavailable at the time the contract was executed, the arbitration provision was unenforceable; the contract language required that arbitration be conducted by a form that was unavailable at the time the contract was executed and had been an impossibility for approximately seventeen

years prior to it execution. Hillhouse v. Chris Cook Constr., LLC, 325 So. 3d 646, 2021 Miss. LEXIS 264 (Miss. 2021).

While the construction arbitration statutes clearly aim to encourage arbitration and fill in details when the parties clearly agreed to arbitrate, thus enforcing a valid contractual obligation to arbitrate much like the Federal Arbitration Act, nothing in the statutes indicates a legislative intent to completely supplant the right to contract. Hillhouse v. Chris Cook Constr., LLC, 325 So. 3d 646, 2021 Miss. LEXIS 264 (Miss. 2021).

§ 11-15-105. Application for order to proceed with arbitration; stay; determination of issues.

JUDICIAL DECISIONS

ANALYSIS

3. Arbitration provision held unenforceable.
4. Construction.

3. Arbitration provision held unenforceable.

Because the arbitration provision in homeowners' agreement with a contractor unequivocally required use of an unavailable forum, and because that forum was unavailable at the time the contract was executed, the arbitration provision was unenforceable; the contract language required that arbitration be conducted by a form that was unavailable at the time the contract was executed and had been an impossibility for approximately seventeen years prior to it execution. Hillhouse v. Chris Cook Constr., LLC, 325 So. 3d 646, 2021 Miss. LEXIS 264 (Miss. 2021).

4. Construction.

While the construction arbitration statutes clearly aim to encourage arbitration and fill in details when the parties clearly agreed to arbitrate, thus enforcing a valid contractual obligation to arbitrate much like the Federal Arbitration Act, nothing in the statutes indicates a legislative intent to completely supplant the right to contract. Hillhouse v. Chris Cook Constr., LLC, 325 So. 3d 646, 2021 Miss. LEXIS 264 (Miss. 2021).

§ 11-15-109. Appointment of arbitrators.

JUDICIAL DECISIONS

ANALYSIS

1. Arbitration provision unenforceable.
2. Refomation.

1. Arbitration provision unenforceable.

Because the arbitration provision in homeowners' agreement with a contractor unequivocally required use of an unavailable forum, and because that forum was unavailable at the time the contract was executed, the arbitration provision was unenforceable; the contract language required that arbitration be conducted by a form that was unavailable at the time the contract was executed and had been an impossibility for approximately seventeen years prior to it execution. Hillhouse v. Chris Cook Constr., LLC, 325 So. 3d 646, 2021 Miss. LEXIS 264 (Miss. 2021).

2. Refomation.

While the language of the statute is broad, it cannot be used to require the courts to completely reform a contract; when the essence of the agreement is to arbitrate and the situs or arbitrator is a minor consideration, the statute may be used to designate an arbitrator if necessary, but when the situs or arbitrator is a contract requirement, courts should not rewrite an agreement due to forum availability in favor of the drafter to select a forum unanticipated by either party. Hillhouse v. Chris Cook Constr., LLC, 325 So. 3d 646, 2021 Miss. LEXIS 264 (Miss. 2021).

CHAPTER 44.

COMPENSATION TO VICTIMS OF WRONGFUL CONVICTION AND IMPRISONMENT

§ 11-44-1. Legislative findings and intent.

JUDICIAL DECISIONS

2. Evidence — sufficiency.

In a wrongful conviction case brought under Miss. Code Ann. § 11-44-1 (2019), the trial court did not err by granting the State's motion for summary judgment because the claimant's conviction was reversed due to a defective search warrant, not circumstances showing actual innocence. Sutton v. State, — So. 3d —, 2022 Miss. LEXIS 25 (Miss. Feb. 3, 2022).

CHAPTER 46.

IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR TORTS AND TORTS OF EMPLOYEES

§ 11-46-9. Exemption of governmental entity from liability on claims based on specified circumstances.

JUDICIAL DECISIONS

ANALYSIS

8. Police or fire protection.
9. Immunity.

8. Police or fire protection.

Based on the evidence presented, the trial judge rejected the argument that the police officer was duty-bound to use deadly force after he first used his taser and was unable to subdue the perpetrator; the judge found that the deputies and the county were entitled to immunity under the Mississippi Tort Claims Act because the deputies had exercised their judgment in good faith in a short window of time under difficult circumstances. Floyd v. Tunica Cnty., 333 So. 3d 864, 2022 Miss. App. LEXIS 11 (Miss. Ct. App. 2022).

9. Immunity.

A county and the county engineer, in the engineer's representative capacity, were immune from suit when the heirs of the decedent brought a wrongful death action after the decedent was killed while working on a county construction project because the dangerous condition of working near power lines was open and obvious and the heirs failed to prove the negligence required to defeat statutory immunity as the heirs failed to present proof of a breached duty that caused the dangerous condition. McGee v. Neel Schaffer Eng'rs & Planners Inc., — So. 3d —, 2022 Miss. App. LEXIS 105 (Miss. Ct. App. Mar. 29, 2022).

Trial court erred when it granted summary judgment in favor of defendant city, finding that the city was immune from liability under the Mississippi Tort Claims Act (MTCA)—specifically, discretionary-function immunity, because the trial court mischaracterized the negligence claim at issue and correctly characterized as a negligent-failure-to-inspect-and-maintain claim, the property owners could set forth a set of facts where the city would not be

immune. Hood v. City of Pearl, 333 So. 3d 73, 2021 Miss. App. LEXIS 462 (Miss. Ct. App. 2021).

§ 11-46-11. Statute of limitations; notice of claim requirements; savings clause in favor of infants and those of unsound mind.

JUDICIAL DECISIONS

ANALYSIS

8. Written notice.
10. Time to file action.

8. Written notice.

Patient satisfied the notice requirements because she delivered a proper notice of claim more than ninety days before filing the second suit; whether an intervening first complaint was filed was of no consequence, because, despite the patient's early filing of the initial lawsuit, she remained entitled to benefit from the tolling provisions, and the second lawsuit was identical to the first in all respects. Greenwood Leflore Hosp. v. Watson, 324 So. 3d 766, 2021 Miss. LEXIS 245 (Miss. 2021).

10. Time to file action.

County court erred in granting an injured licensee's motion for extension of time to serve process on the attorney general because she failed to do so in the 120-day statute of limitations, and, giving credit to all tolling periods, the statute of limitations for her claim against a university expired long before she served the attorney general. Univ. of Miss. Med. Ctr. v. Jensen, 334 So. 3d 78, 2022 Miss. LEXIS 52 (Miss. 2022).

CHAPTER 51.

APPEALS

§ 11-51-3. Appeals to Supreme Court.

JUDICIAL DECISIONS

16. Dismissal of appeal.

Order granting summary judgment in favor of an oil company and an oil well owner was not a final judgment because it did not dispose of an employee's claims against independent contractors, and the circuit court did not certify the order as final; because there was no appealable final judgment, the court of appeals lacked appellate jurisdiction and dismissed the appeal. Blaney v. Black Jack Oil Co., 2021 Miss. App. LEXIS 339 (Miss. Ct. App. Aug. 24, 2021).

§ 11-51-75. Appeal to circuit court from decision of a local governing authority.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
11. Disposition of appeal.
17. Final decision.

1. In general.

Under Miss. Code Ann. § 11-51-75, as

revised, it is the filing of the notice of appeal that establishes appellate jurisdiction in the circuit court. Am. Tower Asset Sub, LLC v. Marshall Cty., 324 So. 3d 300, 2021 Miss. LEXIS 242 (Miss. 2021).

Having failed in its attempt to challenge the mayor's veto in an appeal, a city engineer could collaterally attack the veto in its breach-of-contract action. 2021 Miss. App. LEXIS 393.

11. Disposition of appeal.

It was reversible error for the circuit court to dismiss an appeal by a limited liability company (LLC) of a decision by a county board of supervisors under Miss. Code Ann. § 11-51-75. Although the LLC did not deliver a copy of the notice of appeal to the president of the board of supervisors, this defect was procedural and could be remedied. Am. Tower Asset Sub, LLC v. Marshall Cty., 324 So. 3d 300, 2021 Miss. LEXIS 242 (Miss. 2021).

17. Final decision.

Vote of a board of aldermen to approve a claims docket that included a city engineer's disputed invoices did not operate as a retroactive ratification of the contract because the vote was nothing more than an interlocutory step in the legislative process; once the mayor vetoed the board's action, the vote was legally ineffective and had no further legal significance. 2021 Miss. App. LEXIS 393.

§ 11-51-79. Appeals from the county court.

JUDICIAL DECISIONS

2. Jurisdiction.

Because plaintiff failed to pay the cost bond within the time required by Miss. Code Ann. § 11-51-79, his appeal from the county court's judgment was not perfected, and the circuit court lacked appellate jurisdiction. Therefore, defendant's motion to dismiss plaintiff's appeal was appropriately granted. Shope v. Winkelmann, 328 So. 3d 641, 2021 Miss. LEXIS 278 (Miss. 2021).

CHAPTER 55.

LITIGATION ACCOUNTABILITY ACT OF 1988

§ 11-55-3. Definitions.

JUDICIAL DECISIONS

1. In general.

Circuit court erred by denying opponents' request for attorneys' fees under the Litigation Accountability Act of 1988 (LAA) because it erred in its application of the LAA by failing to impose sanctions on the candidates for bringing six frivolous claims; the circuit court, after finding candidates' six claims to have been frivolous, erred by determining that the award of attorneys' fees remained within its discretion. Wiggs v. Taylor (In re Contest of the November 5, 2019), 329 So. 3d 434, 2021 Miss. LEXIS 351 (Miss. 2021).

§ 11-55-5. Assessment of attorney fees and costs against attorney or party for meritless action, claim or defense, unwarranted delay, or unnecessary proceedings.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
5. Payment of attorneys' fees denied.

1. In general.

Application of the language of subsection (1) is formulaic: if the court finds that a claim brought by a party is without substantial justification, which includes frivolous claims per Miss. Code Ann. § 11-55-3(a), the trial court shall award reasonable attorneys' fees and costs against the party asserting a frivolous claim; use of the mandatory phrase "shall award" in subsection (1) is neither permissive nor indicative of a discretionary standard. Wiggs v. Taylor (In re Contest of the November 5, 2019), 329 So. 3d 434, 2021 Miss. LEXIS 351 (Miss. 2021).

5. Payment of attorneys' fees denied.

Circuit court erred by denying opponents' request for attorneys' fees under the Litigation Accountability Act of 1988 (LAA) because it erred in its application of the LAA by failing to impose sanctions on the candidates for bringing six frivolous claims; the circuit court, after finding candidates' six claims to have been frivolous, erred by determining that the award of attorneys' fees remained within its discretion under subsection (1). Wiggs v. Taylor (In re Contest of the November 5, 2019), 329 So. 3d 434, 2021 Miss. LEXIS 351 (Miss. 2021).

TITLE 13.
EVIDENCE, PROCESS AND JURIES

CHAPTER 5.
JURIES

§ 13-5-8. Master list consisting of county voter registration list to be compiled and maintained; exclusion of persons permanently excused from jury service from list; reinstatement of permanently excused persons.

JUDICIAL DECISIONS

1. Constitutionality.

Defendant's vague assertion that young adults, blacks, Hispanics, poor people, and other segments of the community traditionally did not vote was insufficient proof that Miss. Code Ann. § 13-5-8 was unconstitutional where he pointed to no evidence in the record supporting that assertion. Walker v. State, — So. 3d —, 2021 Miss. App. LEXIS 502 (Miss. Ct. App. Dec. 7, 2021).

§ 13-5-23. Exemptions; length of service of tales and grand jurors.

JUDICIAL DECISIONS

1. In general.

Nothing justified the trial judge's failure to comply with the statute, which provided that a judge was to decide whether to excuse an individual from jury service; here, the clerk and court administrator unilaterally excused approximately 30 percent of potential jurors, and they testified that they were the ones to handle potential juror excuses. There should be no doubt that such violations may be a basis for grounds for appeal, but relief must be sought before the jury is impaneled and sworn. Hyundai Motor Am. v. Hutton, _So. 3d _, 2021 Miss. LEXIS 256 (Miss. 2021).2021 Miss. LEXIS 256.

TITLE 15.

LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

CHAPTER 1.

LIMITATION OF ACTIONS

§ 15-1-7. Limitations applicable to actions to recover land.

JUDICIAL DECISIONS

13. When limitation period runs, generally.

Sons' causes of action relating to the "existence of a trust" and the recovery of land should not have been dismissed pursuant to the three-year statute of limitations, but rather should have been analyzed as to whether they were filed within the prescribed period of time mandated by the ten-year statute of limitations; the trial court lumped all of the causes of actions together and dismissed the entire complaint based on the three-year statute of limitations, and the sons' claims, for which the ten-year statute of limitations applied, were dismissed erroneously. Parker v. Ross, — So. 3d —, 2022 Miss. App. LEXIS 155 (Miss. Ct. App. May 10, 2022).

14. —Particular cases.

Creditors had no legal or equitable interest in the debtor's homestead property because the statute of limitations had run, and the creditors were barred from reforming the deed of trust as the creditors were aware of the mistake on the deed and its progression of title as early as 2001, when the tax assessor's office mailed a company a letter, and the letter imputed knowledge of the title issue to the company's successors-in-interest, first a mortgage company and now the creditors. Jones v. Citibank, N.A. (In re Jones), — B.R. —, 2021 Bankr. LEXIS 3476 (Bankr. N.D. Miss. Dec. 12, 2021).

§ 15-1-9. Limitations applicable to suits in equity to recover land.

JUDICIAL DECISIONS

6. Running of limitations period, generally.

8. —Particular cases.

Creditors had no legal or equitable interest in the debtor's homestead property because the statute of limitations had run, and the creditors were barred from reforming the deed of trust as the creditors were aware of the mistake on the deed and its progression of title as early as 2001, when the tax assessor's office mailed a company a letter, and the letter imputed knowledge of the title issue to the company's successors-in-interest, first a mortgage company and now the creditors. Jones v. Citibank, N.A. (In re Jones), — B.R. —, 2021 Bankr. LEXIS 3476 (Bankr. N.D. Miss. Dec. 12, 2021).

§ 15-1-13. Ten years' adverse possession gives title; exceptions.

JUDICIAL DECISIONS

11. Tax sales.

Chancery court erred in ruling that the alleged landowner's title to the property by adverse possession had ripened prior to the tax sale because he failed to prove by clear and convincing evidence sufficient acts between 2000 and 2012 when he purchased the land at tax sale to establish ownership by adverse possession. The record clearly showed that he gave no actual notice to any co-heir or cotenant of his intent to claim the property by adverse possession and his actions, though somewhat inflated by the chancery court, were still actions consistent with those of a cotenant. Anderson v. Jackson, — So. 3d —, 2022 Miss. App. LEXIS 125 (Miss. Ct. App. Apr. 26, 2022).

§ 15-1-29. Limitations applicable to actions on accounts and unwritten contracts.

JUDICIAL DECISIONS

15. Miscellaneous.

Chancery court did not err in its determination that appellant's claim for expert witness fees was barred both by the one-year statute of limitations under Miss. Code Ann. § 15-1-29 and the three-year statute of limitations under Miss. Code Ann. § 15-1-49. The chancery court did not abuse its discretion in determining that no contract existed which would obligate appellee and or his family to pay any costs not paid by the USDA to appellant. O'Brien v. Pegues, 325 So. 3d 1228, 2021 Miss. App. LEXIS 358 (Miss. Ct. App. 2021).

§ 15-1-35. Limitations applicable to actions for certain torts.

JUDICIAL DECISIONS

ANALYSIS

2. Applicability.
3. Accrual.
10. Intentional infliction of emotional distress.

2. Applicability.

Circuit court was correct in allowing an insured's abuse of process and intentional infliction of emotional distress claims to proceed because the actions at issue did not fall within the specific subjects expressed within Miss. Code Ann. § 15-1-35 but fit comfortably within the general clause expressed by Miss. Code Ann. § 15-1-49; the insured's action was timely because it was filed well-within by the three-year statute of limitations established by § 15-1-49. Geico Cas. Co. v. Stapleton, 315 So. 3d 464, 2021 Miss. LEXIS 100 (Miss. 2021).

3. Accrual.

Trial court did not err by denying a tenant's untimely motion to amend the tenant's counterclaim by adding claims of libel and libel per se against the successor landlord because not only did the tenant file the motion to amend extremely close to the date of trial, but also the claims were barred by the statute of limitations as the emails on which the tenant's claims were based were in the tenant's possession more than a year before the motion to amend was filed. Holcomb v. 400 S. Lamar Oxford Mad Hatter Partners, LLC, 335 So. 3d 568, 2022 Miss. LEXIS 78 (Miss. 2022).

10. Intentional infliction of emotional distress.

Supreme court overrules Jones v. Fluor Daniel Services Corp., 32 So. 3d 417 (Miss. 2010), because it judicially expanded the one-year statute of limitations in Miss. Code Ann. § 15-1-35 to include torts beyond the ones chosen by the Legislature and return to the supreme court's original interpretation as stated in Norman v. Bucklew, 684 So. 2d 1246, 1256 (Miss. 1996); intentional and/or negligent infliction of emotional distress claims are governed by the three-year statute of limitations. Geico Cas. Co. v. Stapleton, 315 So. 3d 464, 2021 Miss. LEXIS 100 (Miss. 2021).

§ 15-1-36. Limitations applicable to malpractice action arising from medical, surgical or other professional services.

JUDICIAL DECISIONS

6. Particular cases.

In a medical malpractice case, the circuit court properly granted summary judgment in favor of defendant because the two-year statute of limitations, Miss. Code Ann. § 15-1-36(2), expired after the plaintiff failed to timely serve process on the defendant; plaintiff filed her complainant within the statute of limitations, but did not serve it until two years later. The minors savings provisions of the medical malpractice statute, Miss. Code Ann. § 15-1-59, did not toll the limitations period, because the minor was fifteen years old and had a parent at the time of the alleged malpractice. Span v. Nichols, 306 So. 3d 781, 2020 Miss. App. LEXIS 164 (Miss. Ct. App.), cert. denied, 308 So. 3d 438, 2020 Miss. LEXIS 495 (Miss. 2020).

§ 15-1-39. Limitations applicable to actions involving certain trusts.

JUDICIAL DECISIONS

1. In general.

Sons' causes of action relating to the "existence of a trust" and the recovery of land should not have been dismissed pursuant to the three-year statute of limitations, but rather should have been analyzed as to whether they were filed within the prescribed period of time mandated by the ten-year statute of limitations; the trial court lumped all of the causes of actions together and dismissed the entire complaint based on the three-year statute of limitations, and the sons' claims, for which the ten-year statute of limitations applied, were dismissed erroneously. Parker v. Ross, — So. 3d —, 2022 Miss. App. LEXIS 155 (Miss. Ct. App. May 10, 2022).

§ 15-1-43. Limitations applicable to actions founded on domestic judgments or decrees; renewal of judgment or decree; notice of renewal.

JUDICIAL DECISIONS

5. Computation of limitation period.

Wife filed her contempt action within seven years after husband breached the property settlement agreement by allowing his insurance policy to lapse in 2013, and thus wife's action was not barred by the statute of limitations; husband's argument that wife's claim was barred by the three-year statute of limitations applicable to claims for breach of contract

lacked merit. Siders v. Zickler, 312 So. 3d 1224, 2021 Miss. App. LEXIS 106 (Miss. Ct. App. 2021).

§ 15-1-49. Limitations applicable to actions not otherwise specifically provided for.

JUDICIAL DECISIONS

ANALYSIS

2. In general.
4. —Applicability.
5. —Particular cases.
40. Particular cases; miscellaneous.

2. In general.

4. —Applicability.

Wife filed her contempt action within seven years after husband breached the property settlement agreement by allowing his insurance policy to lapse in 2013, and thus wife's action was not barred by the statute of limitations; husband's argument that wife's claim was barred by the three-year statute of limitations applicable to claims for breach of contract lacked merit. Siders v. Zickler, 312 So. 3d 1224, 2021 Miss. App. LEXIS 106 (Miss. Ct. App. 2021).

5. —Particular cases.

Case was remanded to the trial court to determine when an investor's unjust enrichment cause of action accrued because the statute of limitations should not have run from the date the investor cut checks for lots but from the time his cause of action for unjust enrichment actually accrue; the trial court should have looked to when the investor knew or should have known he would receive neither lots nor any benefit from the developers. Hughes v. Shipp, 2021 Miss. LEXIS 229 (Miss. Aug. 26, 2021).

40. Particular cases; miscellaneous.

If claims were barred as a matter of law by the Mississippi statute of limitations, then those claimants' requests for relief from the Bar Date made no difference, because there were no valid claims for which any bankruptcy relief or recovery would be available. In re Tronox Inc., — B.R. —, 2021 Bankr. LEXIS 577 (Bankr. S.D.N.Y. Mar. 10, 2021).

CHAPTER 3.

PREVENTION OF FRAUDS

ARTICLE 3.

UNIFORM FRAUDULENT TRANSFER ACT.

§ 15-3-107. Fraudulent transfers as to present and future creditors; determination of actual intent; rebuttable presumption of fraud.

JUDICIAL DECISIONS

1. No fraudulent transfer.

Chapter 7 trustee had no cause of action under § 15-3-107 of Mississippi's Uniform Fraudulent Transfer Act, Miss. Code Ann. § 15-3-107, because the proceeds of the sale of the property, held by debtor and non-debtor spouse in a tenancy by the entirety, like the real property itself, were

exempt from process by any creditor of either individual spouse. Henderson v. Howse (In re Howse), — B.R. —, 2021 Bankr. LEXIS 1859 (Bankr. S.D. Miss. July 12, 2021).

TITLE 17.

LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES

CHAPTER 1.

ZONING, PLANNING AND SUBDIVISION REGULATION

GENERAL PROVISIONS

§ 17-1-23. Subdivision regulation.

JUDICIAL DECISIONS

1. In general.

The circuit court did not err by entering an order reversing a decision by the County Board of Supervisors to approve the division of lot, because the application to divide the property had to be resubmitted with written approval of "directly interested" and/or "adversely affected" persons as required by Miss. Code Ann. § 17-1-23(4). If the landowner was unable to procure the required parties' written approval, he was directed to proceed under Miss. Code Ann. § 19-27-31 in chancery court. Desoto County v. Vinson, — So. 3d —, 2022 Miss. App. LEXIS 88 (Miss. Ct. App. Mar. 15, 2022).

TITLE 19.
COUNTIES AND COUNTY OFFICERS
CHAPTER 27.
SURVEYORS AND SURVEYS

§ 19-27-31. Maps and plats; alteration and vacation.

JUDICIAL DECISIONS

2. Amendment improper.

The circuit court did not err by entering an order reversing a decision by the County Board of Supervisors to approve the division of lot, because the application to divide the property had to be resubmitted with written approval of "directly interested" and/or "adversely affected" persons as required by Miss. Code Ann. § 17-1-23(4). If the landowner was unable to procure the required parties' written approval, he was directed to proceed under Miss. Code Ann. § 19-27-31 in chancery court. Desoto County v. Vinson, — So. 3d —, 2022 Miss. App. LEXIS 88 (Miss. Ct. App. Mar. 15, 2022).

TITLE 23.

ELECTIONS

Chapter 15. Mississippi Election Code. 23-15-1

CHAPTER 15.

MISSISSIPPI ELECTION CODE

Article 19. Absentee Ballots. 23-15-621

ARTICLE 19.

ABSENTEE BALLOTS.

Subarticle A. Absentee Balloting Procedures Law. 23-15-621

SUBARTICLE A.

ABSENTEE BALLOTING PROCEDURES LAW.

Sec.

23-15-627. Distribution of absentee ballot application by registrar; request for absentee ballot application; form of application.

§ 23-15-627. Distribution of absentee ballot application by registrar; request for absentee ballot application; form of application.

Any elector described in Section 23-15-713 may request an absentee ballot application and vote in person at the office of the registrar in the county in which he or she resides. The registrar shall be responsible for furnishing an absentee ballot application form to any elector authorized to receive an absentee ballot. Except as otherwise provided in Section 23-15-625, absentee ballot applications shall be furnished to a person only upon the oral or written request of the elector who seeks to vote by absentee ballot; however, the parent, child, spouse, sibling, legal guardian, those empowered with a power of attorney for that elector's affairs or agent of the elector, who is designated in writing and witnessed by a resident of this state who shall write his or her physical address on such designation, may orally request an absentee ballot application on behalf of the elector. The written designation shall be valid for one (1) year after the date of the designation. An absentee ballot application must have the seal of the circuit or municipal clerk affixed to it and be initialed by the registrar or his or her deputy in order to be used to obtain an absentee ballot. A reproduction of an absentee ballot application shall not be valid unless it is a reproduction provided by the office of the registrar of the jurisdiction in which the election is being held and which contains the seal and initials

required by this section. Such application shall be substantially in the following form:

"OFFICIAL APPLICATION FOR ABSENT ELECTOR'S BALLOT

I, _____, duly qualified and registered in the _____ Precinct of the County of_____, and State of Mississippi, coming within the purview of the definition 'ABSENT ELECTOR' will be absent from the county of my residence on election day, or unable to vote in person because (check appropriate reason):

( ) (PRESIDENTIAL APPLICANT ONLY:) I am currently a resident of Mississippi or have moved therefrom within thirty (30) days of the coming presidential election.

( ) I am an enlisted or commissioned member, male or female, of any component of the United States Armed Forces and am a citizen of Mississippi, or spouse or dependent of such member.

( ) I am a member of the Merchant Marine or the American Red Cross and am a citizen of Mississippi or spouse or dependent of such member.

( ) I am a disabled war veteran who is a patient in any hospital and am a citizen of Mississippi or spouse or dependent of such veteran.

( ) I am a civilian attached to and serving outside of the United States with any branch of the Armed Forces or with the Merchant Marine or American Red Cross, and am a citizen of Mississippi or spouse or dependent of such civilian.

( ) I am a citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia.

( ) I am a student, teacher or administrator at a college, university, junior or community college, high, junior high, elementary or grade school, whose studies or employment at such institution necessitates my absence from the county of my voting residence or spouse or dependent of such student, teacher or administrator who maintains a common domicile outside the county of my voting residence with such student, teacher or administrator.

( ) I will be outside the county on election day.

( ) I have a temporary or permanent physical disability, which may include, but is not limited to, a physician-imposed quarantine due to COVID-19 during the year 2020. Or, I am caring for a dependent that is under a physician-imposed quarantine due to COVID-19 beginning with July 8, 2020, and the same being repealed on December 31, 2020.

( ) I am sixty-five (65) years of age or older.

( ) I am the parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside his or her county of residence or more than fifty (50) miles away from his or her residence, and I will be with such person on election day.

( ) I am a member of the congressional delegation, or spouse or dependent of a member of the congressional delegation.

( ) I am required to be at work on election day during the times which the polls will be open.

I hereby make application for an official ballot, or ballots, to be voted by me at the election to be held in _____, on _____.

Mail 'Absent Elector's Ballot' to me at the following address _____.

( ) I wish to receive an absentee ballot for the runoff election _____.

I realize that I can be fined up to Five Thousand Dollars ($5,000.00) and sentenced up to five (5) years in the Penitentiary for making a false statement in this application and for selling my vote and violating the Mississippi Absentee Voter Law. (This sentence is to be in bold print.)

If you are temporarily or permanently disabled, you are not required to have this application notarized or signed by an official authorized to administer oaths for absentee balloting. You are required to sign this application in the proper place and have a person eighteen (18) years of age or older witness your signature and sign this application in the proper place.

DO NOT SIGN WITHOUT READING. (This sentence is to be in bold print.)

IN WITNESS WHEREOF I have hereunto set my hand and seal this the ____ day of _____, 2____.

_____

(Signature of absent elector)

SWORN TO AND SUBSCRIBED before me this the ____ day of _____, 2____.

_____

(Official authorized to administer oaths for absentee balloting.)

TO BE SIGNED BY WITNESS FOR VOTERS TEMPORARILY OR PERMANENTLY DISABLED:

I HEREBY CERTIFY that this application for an absent elector's ballot was signed by the above-named elector in my presence and that I am at least eighteen (18) years of age, this the ____ day of _____, 2____.

_____

(Signature of witness)

CERTIFICATE OF DELIVERY

I hereby certify that _____ (print name of voter) has requested that I, _____ (print name of person delivering application), deliver to the voter this absentee ballot application.

_____

(Signature of person delivering application)

_____

(Address of person delivering application)"

HISTORY: Derived from 1972 Code § 23-9-407 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 201; Laws, 1986, ch. 495, § 201; Laws, 1993, ch. 528, § 6; Laws, 1999, ch. 420, § 2; Laws, 2000, ch. 592, § 9; Laws, 2008, ch. 528, § 10, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2020, ch. 472, § 5, eff from and after passage (approved July 8, 2020).

Editor's Notes — This section is set out above to correct errors in the Official Application for Absent Elector's Ballot form as it appeared in the 2021 Volume 6A Cumulative Supplement.

TITLE 25.

PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

CHAPTER 1.

PUBLIC OFFICERS; GENERAL PROVISIONS

§ 25-1-13. State officials to make guaranty or surety bonds.

JUDICIAL DECISIONS

1. Liability on bonds.

Surety which issued two public-official bonds for a member of a county board of supervisors was not liable under both bonds because the insurer complied with the board's request that the first bond be converted from a one-year to a four-year bond, cancelled the first bond, and issued a second bond for which the board paid the premium. Therefore, the first bond was unenforceable for lack of premium payment because the only consideration contemplated for the first bond was the premium payment, but the board did not make this payment. State Auditor Shad White & Holmes Cty. v. Nationwide Mut. Ins. Co., 2021 Miss. LEXIS 198 (Miss. Aug. 5, 2021).

§ 25-1-33. Premiums on official bonds.

JUDICIAL DECISIONS

1. Failure to pay premium.

Surety which issued two public-official bonds for a member of a county board of supervisors was not liable under both bonds because the insurer complied with the board's request that the first bond be converted from a one-year to a four-year bond, cancelled the first bond, and issued a second bond for which the board paid the premium. Therefore, the first bond was unenforceable for lack of premium payment because the only consideration contemplated for the first bond was the premium payment, but the board did not make this payment. State Auditor Shad White & Holmes Cty. v. Nationwide Mut. Ins. Co., 2021 Miss. LEXIS 198 (Miss. Aug. 5, 2021).

CHAPTER 3.

SALARIES AND COMPENSATION

VACATION TIME AND SICK LEAVE

§ 25-3-95. Major medical leave.

JUDICIAL DECISIONS

1. Applicability.

Mississippi Workers' Compensation Commission erred in finding that the employer was entitled to a credit for indemnity benefits tendered to the claimant during a four-month period where there was not a previous administrative judge (AJ) order from the time period officially

classifying him as temporarily disabled until he reached maximum medical improvement, and under case law, the AJ's one and only order rating the claimant's disability as permanent related back to the date of injury and precluded the AJ from retroactively declaring that he was entitled to both temporary benefits and permanent benefits. Because the claimant was specifically awarded permanent total disability benefits, Miss. Code Ann. § 25-3-95(2)(b) did not apply to the workers' compensation benefits at issue in the instant case regarding what the claimant was entitled to receive under the specific facts. Keys v. Military Dep't Gulfport, — So. 3d —, 2022 Miss. App. LEXIS 144 (Miss. Ct. App. May 10, 2022).

CHAPTER 9.

STATEWIDE PERSONNEL SYSTEM

PERSONNEL ADMINISTRATION SYSTEM

§ 25-9-120. Contract personnel not state service or nonstate service employees of state; Personal Service Contract Review Board abolished; Public Procurement Review Board to be the Personal Service Contract Review Board.

JUDICIAL DECISIONS

1. Approval.

Question of whether the chancery court should have considered the Personal Service Contract Review Board (PSCRB) approval was irrelevant because the proffered PSCRB minutes indicated that the PSCRB ratified the contracts for the State's managed-care program; the PSCRB approved the contracts de facto by not disapproving them, and the PSCRB rules and regulations did not require approval before execution. Miss. True v. Dzielak, 293 So. 3d 243, 2020 Miss. LEXIS 83 (Miss. 2020).

PROTECTION OF PUBLIC EMPLOYEE FROM REPRISAL FOR GIVING INFORMATION TO INVESTIGATIVE BODY OR AGENCY

§ 25-9-171. Definitions.

JUDICIAL DECISIONS

1. State investigative body.

Summary judgment in favor of a state agency was appropriate when an employee of state agency alleged that the employee was wrongfully discharged for a call to action letter that the employee sent to various public officials, including state legislators, because no evidence suggested that the employee sent the letter only to a select group of legislators due to the legislators' membership in certain committees. Rushing v. Miss. Dep't of Child Prot. Servs., — F.3d —, 2022 U.S. App. LEXIS 7797 (5th Cir. Miss. Mar. 24, 2022).

§ 25-9-173. Prohibition against dismissing or adversely affecting compensation or employment status of public employee for providing information to investigative body; reprisals and retaliatory actions; conditions for recovery of damages and other remedies.

JUDICIAL DECISIONS

1. Applicability.

Summary judgment in favor of a state agency was appropriate when an employee of state agency alleged that the employee was wrongfully discharged for a call to action letter that the employee sent to various public officials, including state legislators, because no evidence suggested that the employee sent the letter only to a select group of legislators due to the legislators' membership in certain committees. Rushing v. Miss. Dep't of Child Prot. Servs., — F.3d —, 2022 U.S. App. LEXIS 7797 (5th Cir. Miss. Mar. 24, 2022).

CHAPTER 11.

SOCIAL SECURITY AND PUBLIC EMPLOYEES' RETIREMENT AND DISABILITY BENEFITS

ARTICLE 3.

ADDITIONAL STATE RETIREMENT AND DISABILITY BENEFITS.

§ 25-11-113. Disability retirement.

JUDICIAL DECISIONS

ANALYSIS

1. Evidence.
4. Judicial review.

1. Evidence.

Substantial evidence supported the Public Employees' Retirement System of Mississippi Board's denial of claims for non-duty-related disability benefits where several of her doctors noted that objective medical testing returned normal or unremarkable results, and even given her diagnosed medical conditions, the work restrictions that doctors gave her did not prevent her from performing the usual duties of teaching. Davis v. Public Emples. Ret. Sys. of Miss., 296 So. 3d 97, 2019 Miss. App. LEXIS 527 (Miss. Ct. App. 2019), cert. denied, 297 So. 3d 1109, 2020 Miss. LEXIS 238 (Miss. 2020).

4. Judicial review.

Public Employees' Retirement System Medical Board's decision to deny the employee duty-related disability benefits was not arbitrary and capricious under § 25-11-113(1)(a) because both the independent medical examination and the functional capacity examination determined he was not permanently disabled as a result of the work injury. Smith v. Pub. Emples. Ret. Sys., — So. 3d —, 2022 Miss. App. LEXIS 135 (Miss. Ct. App. May 3, 2022).

§ 25-11-114. Retirement allowance for death before retirement or death or disability in line of duty.

JUDICIAL DECISIONS

ANALYSIS

5. Eligibility.
6. Judicial review.

5. Eligibility.

Denial of duty-related disability benefits from the Public Employees' Retirement System of Mississippi was supported by substantial evidence, as post-traumatic stress disorder was not a physical injury. Carver v. Public Emples. Ret. Sys. of Miss., — So. 3d —, 2019 Miss. App. LEXIS 525 (Miss. Ct. App. Oct. 29, 2019), aff'd, 306 So. 3d 694, 2020 Miss. LEXIS 483 (Miss. 2020).

6. Judicial review.

Substantial evidence support the denial of claims for duty-related disability benefits given the substantial evidence that the claimant lacked a permanent disability that prevented her from teaching. Davis v. Public Emples. Ret. Sys. of Miss., 296 So. 3d 97, 2019 Miss. App. LEXIS 527 (Miss. Ct. App. 2019), cert. denied, 297 So. 3d 1109, 2020 Miss. LEXIS 238 (Miss. 2020).

TITLE 27.
TAXATION AND FINANCE

Chapter 51. Ad Valorem Taxes—Motor Vehicles. 27-51-1

CHAPTER 7.
INCOME TAX AND WITHHOLDING

ARTICLE 1.
INCOME TAX.

§ 27-7-49. Examination of returns.

JUDICIAL DECISIONS

1. In general.

When the Department of Revenue provides a notice of an examination in accordance with Miss. Code Ann. § 27-7-49(2), the statute of limitations found within § 27-7-49(1) cannot run, hence, it is tolled. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

Notice of examination itself explicitly states that it serves to arrest the statute of limitations found within Miss. Code Ann. §§ 27-7-49 and 27-13-49; while the notice does use the word arrest instead of toll, the two are synonymous, and therefore, the notice tolls only the statute of limitations mentioned in the notice, not that of Miss. Code Ann. § 27-7-313. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

Miss. Code Ann. § 27-7-49(2) does not reference tolling Miss. Code Ann. § 27-7-313 or tolling a taxpayer's time to seek a refund, and the only time restriction it mentions is the one found in § 27-7-49(1), not the one found in § 27-7-313; language of § 27-7-49(2) does not extend the notice of examination's tolling privilege to a taxpayer's time to file a refund claim. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

It is clear that Miss. Code Ann. § 27-7-49(2) does not contain language regarding a taxpayer's ability to file a refund claim and it applies to the Department of Revenue, not to taxpayers; therefore, the Mississippi Supreme Court cannot find that a taxpayer can file a refund claim in compliance with § 27-7-49(2) when the statute itself does not permit it. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

Miss. Code Ann. § 27-7-313 controls a taxpayer's time for filing an income tax refund claim, not Miss. Code Ann. § 27-7-49(2), and thus § 27-7-49(2) does not extend the statute of limitations in § 27-7-313. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

Department of Revenue could have issued another assessment in 2014 if it had chosen to do so under one of the exceptions in Miss. Code Ann. § 27-7-49(2)-(4), and since the notice provided by the Department tolled the statute of limitations in the statute, the Department had time remaining in which to commence another examination or make a reassessment under the statute, but the Department was under no duty or obligation to conduct a second examination to establish the correct tax liability of a taxpayer. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

Miss. Code Ann. § 27-7-49(2) applies only to the Department of Revenue and

clearly and unambiguously does not afford a taxpayer additional time to file a new or amended tax-refund claim. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

§ 27-7-51. Additional taxes or refunds.

JUDICIAL DECISIONS

1. Notice sufficient.

2. Duty of Department.

Mandate of Miss. Code Ann. § 27-7-51(1) that the Department of Revenue refund an overpayment of taxes does not apply unless and until the Department has conducted an examination and has made such a determination, and nothing in § 27-7-51(1) mandates that the Department conduct a second examination. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

Department had conducted an examination of the company's initial tax return and concluded that its actual tax liability was not greater or less than that shown in the return and issued a tax assessment for $ 0.00; because the Department found the company's tax determination was correct, Miss. Code Ann. § 27-7-51(1) did not create a duty for the Department to issue a refund after its examination of the company's returns. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

ARTICLE 3.

WITHHOLDING OF TAX.

§ 27-7-313. Refund to taxpayer.

JUDICIAL DECISIONS

1. In general.

Notice of examination itself explicitly states that it serves to arrest the statute of limitations found within Miss. Code Ann. §§ 27-7-49 and 27-13-49; while the notice does use the word arrest instead of toll, the two are synonymous, and therefore, the notice tolls only the statute of limitations mentioned in the notice, not that of Miss. Code Ann. § 27-7-313. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

Procedure laid out in the statute provides that once there has been an overpayment determination, the commissioner, not the taxpayer, is to request that the state auditor approve the amount suggested by the commissioner and begin the refund process; thus, the Department of Revenue is the only entity that can assert a refund request. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

Miss. Code Ann. § 27-7-313 controls a taxpayer's time for filing an income tax refund claim, not Miss. Code Ann. § 27-7-49(2), and thus § 27-7-49(2) does not extend the statute of limitations in § 27-7-313. Caesars Entm't, Inc. v. Miss. Dep't of Revenue, 295 So. 3d 466, 2020 Miss. LEXIS 108 (Miss. 2020).

CHAPTER 43.

AD VALOREM TAXES—NOTICE OF TAX SALE TO OWNERS AND LIENORS

§ 27-43-3. Notice to owners; service of notice; fees.

JUDICIAL DECISIONS

5. Notice fatally flawed.

Tax sale was void as was the tax title issued to the landowner because the notice of forfeiture was fatally flawed, being incompletely dated, unsigned, and unsealed. Consequently, he did not obtain ownership to property by tax deed. Anderson v. Jackson, — So. 3d —, 2022 Miss. App. LEXIS 125 (Miss. Ct. App. Apr. 26, 2022).

§ 27-43-5. Notice to lienors.

JUDICIAL DECISIONS

3. Failure of clerk to give notice.

Had the clerk provided notice to the builder, it almost certainly would have protected its judgment and bid on the property at the tax sale or redeemed the property after the tax sale, but the builder never received notice; the chancellor fashioned an equitable remedy for the builder by setting aside the tax sale and extending the builder's redemption period. HL&C Marion, LLC v. Dima Homes, Inc., — So. 3d —, 2021 Miss. App. LEXIS 449 (Miss. Ct. App. Nov. 2, 2021).

CHAPTER 45.

AD VALOREM TAXES—REDEMPTION OF LAND SOLD FOR TAXES

§ 27-45-27. Rights of purchaser at tax sale; effect of lien; no right of action to challenge validity of tax sale; liability of county or municipal officers to purchasers.

JUDICIAL DECISIONS

2. Application.

There was no error in the chancellor's grant of summary judgment to Sa purchaser in its action seeking to set aside tax sales as void and to order a county to refund it because the amended version of subsection (2) failed to apply to and prevent the purchaser's challenge to the tax-sale purchases. Anderson v. S & S Props., LLC, 334 So. 3d 172, 2022 Miss. App. LEXIS 61 (Miss. Ct. App. 2022).

Second company had standing to challenge the 2016 tax sale because the statute did not retroactively bar the company's claim to set aside the 2016 tax sale. Durrant Inc. v. Lee Cty., — So. 3d —, 2021 Miss. App. LEXIS 514 (Miss. Ct. App. Dec. 14, 2021).

CHAPTER 51.

AD VALOREM TAXES—MOTOR VEHICLES

In General. 27-51-1

IN GENERAL

Sec.
27-51-5. Definitions.

§ 27-51-5. Definitions.

The subject words and terms of this section, for the purpose of this chapter, shall have meanings as follows:

(a) "Motor vehicle" means any device and attachments supported by one or more wheels which is propelled or drawn by any power other than muscular power over the highways, streets or alleys of this state. The term "motor vehicle" shall not include electric bicycles and electric personal assistive mobility devices as defined in Section 63-3-103, or golf carts or low-speed vehicles as defined in Section 63-32-1. However, mobile homes which are detached from any self-propelled vehicles and parked on land in the state are hereby expressly exempt from the motor vehicle ad valorem taxes, but house trailers which are actually in transit and which are not parked for more than an overnight stop are not exempted.

(b) "Public highway" means and includes every way or place of whatever nature, including public roads, streets and alleys of this state generally open to the use of the public or to be opened or reopened to the use of the public for the purpose of vehicular travel, notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

(c) "Administrator of the road and bridge privilege tax law" means the official authorized by law to administer the road and bridge privilege tax law of this state.

HISTORY: Codes, 1942, § 10007-03; Laws, 1958, ch. 588, § 3; Laws, 1960, ch. 413, § 1; Laws, 1968, ch. 587, § 16; Laws, 2003, ch. 485, § 6, eff from and after July 1, 2003; Laws, 2021, ch. 367, § 5, eff from and after passage (approved March 17, 2021); Laws, 2021, ch. 355, § 5, eff from and after July 1, 2021.

Editor's Notes — This section is set out above to correct an error in (a) as itappeared in the 2021 Volume 8B Cumulative Supplement.

CHAPTER 77.

APPELLATE REVIEW FOR TAXPAYERS AGGRIEVED BY CERTAIN ACTIONS OF THE DEPARTMENT OF REVENUE

§ 27-77-7. Judicial review of Board of Tax Appeals' findings and order; petition; surety bond; payment under protest in lieu of bond; payment of uncontested tax by taxpayer; payment of uncontested overpayment by agency; issuance of summons; trial; appeals of chancery court order to Supreme Court.

JUDICIAL DECISIONS

2. Tax appeal.

Chancery court properly granted summary judgment to the Mississippi Board of Tax Appeals in a company's appeal of a franchise-tax assessment because the court had subject-matter jurisdiction over the company's appeal, and the company could not exclude the capital of its single-member limited-liability companies from its franchise-tax base by structuring its business in such a way that precluded the inclusion of capital in its franchise-tax base. Williams Cos. v. Miss. Dep't of Revenue, 296 So. 3d 681, 2020 Miss. LEXIS 244 (Miss. 2020).

TITLE 31.

PUBLIC BUSINESS, BONDS AND OBLIGATIONS

Chapter 7. Public Purchases. 31-7-1

CHAPTER 7.

PUBLIC PURCHASES

In General. 31-7-1

IN GENERAL

Sec.
31-7-13. Bid requirements and exceptions; public auctions.

§ 31-7-13. Bid requirements and exceptions; public auctions.

All agencies and governing authorities shall purchase their commodities and printing; contract for garbage collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals as herein provided.

(a) **Bidding procedure for purchases not over $5,000.00.** Purchases which do not involve an expenditure of more than Five Thousand Dollars ($5,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. However, nothing contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Thousand Dollars ($5,000.00) or less.

(b) **Bidding procedure for purchases over $5,000.00 but not over $50,000.00.** Purchases which involve an expenditure of more than Five Thousand Dollars ($5,000.00) but not more than Fifty Thousand Dollars ($50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any state agency or community/junior college purchasing commodities or procuring construction pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, to accept the lowest competitive written bid under Fifty Thousand Dollars ($50,000.00). Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing

agent or the purchase clerk, or his designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or his designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. "Competitive" shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids. Any bid item for construction in excess of Five Thousand Dollars ($5,000.00) shall be broken down by components to provide detail of component description and pricing. These details shall be submitted with the written bids and become part of the bid evaluation criteria. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

(c) **Bidding procedure for purchases over $50,000.00.**

(i) **Publication requirement.**

1. Purchases which involve an expenditure of more than Fifty Thousand Dollars ($50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars ($25,000.00) shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

2. Reverse auctions shall be the primary method for receiving bids during the bidding process. If a purchasing entity determines that a reverse auction is not in the best interest of the state, then that determination must be approved by the Public Procurement Review Board. The purchasing entity shall submit a detailed explanation of why a reverse auction would not be in the best interest of the state and present an alternative process to be approved by the Public Procurement Review Board. If the Public Procurement Review Board authorizes the purchasing entity to solicit bids with a method other than reverse auction, then the purchasing entity may designate the other methods by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, or bids received by any other method that promotes open competition and has

been approved by the Office of Purchasing and Travel. However, reverse auction shall not be used for any public contract for design or construction of public facilities, including buildings, roads and bridges and term contracts as provided in paragraph (n) of this section. The Public Procurement Review Board must approve any contract entered into by alternative process. The provisions of this item 2 shall not apply to the individual state institutions of higher learning.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars ($50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars ($25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars ($25,000.00) under the American Recovery and Reinvestment Act, publication shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the date of the published notice. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Submissions received by the Mississippi Procurement Technical Assistance Program for projects funded by the American Recovery and Reinvestment Act shall be displayed on a separate and unique Internet web page accessible to the public and maintained by the Mississippi Development Authority for the Mississippi Procurement Technical Assistance Program. Those American Recovery and Reinvestment Act related submissions shall be publicly posted within twenty-four (24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration shall maintain information regard-

ing contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique Internet web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page for the duration of the American Recovery and Reinvestment Act funding or until the project is completed, whichever is longer.

(ii) **Bidding process amendment procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.**

1. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. However, if

valid justification is presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education.

2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or systems in which prospective bidders are instructed to include in their bids specified amounts for such items so long as the allowance items are acquired by the vendor in a commercially reasonable manner and approved by the agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

(v) **Electronic bids.** Agencies and governing authorities shall provide a secure electronic interactive system for the submittal of bids requiring competitive bidding that shall be an additional bidding option for those bidders who choose to submit their bids electronically. The Department of Finance and Administration shall provide, by regulation, the standards that agencies must follow when receiving electronic bids. Agencies and governing authorities shall make the appropriate provisions necessary to accept electronic bids from those bidders who choose to submit their bids electronically for all purchases requiring competitive bidding under this section. Any special condition or requirement for the electronic bid submission shall be specified in the advertisement for bids required by this section. Agencies or governing authorities that are currently without available high speed Internet access shall be exempt from the requirement of this subparagraph (v) until such time that high speed Internet access becomes available. Any county having a population of less than twenty thousand (20,000) shall be exempt from the provisions of this subparagraph (v). Any municipality having a population of less than ten thousand (10,000) shall be exempt from the provisions of this subparagraph (v). The provisions of this subparagraph (v) shall not require any bidder to submit bids electronically. When construction bids are submitted electronically, the requirement for including a certificate of responsibility, or a statement that the bid enclosed does not exceed Fifty Thousand Dollars ($50,000.00), on the exterior of the bid envelope as indicated in Section 31-3-21(1) and (2) shall be deemed in compliance with by including same as an attachment with the electronic bid submittal.

(d) **Lowest and best bid decision procedure.**

(i) **Decision procedure.** Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and

shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions, including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority, may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities. All best value procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) **Decision procedure for Mississippi Landmarks.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of Sections 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid and prequalification procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on

its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(iv) **Construction project negotiations authority.** If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or renovation project, then the agency or governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten

Thousand Dollars ($10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

(f) **Alternate bid authorization.** When necessary to ensure ready availability of commodities for public works and the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.

(g) **Construction contract change authorization.** In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) **Petroleum purchase alternative.** In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids, as defined in paragraph (b) of this section. If two (2) competitive written bids are not obtained, the entity shall comply with the procedures set forth in paragraph (c) of this section. In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

(i) **Road construction petroleum products price adjustment clause authorization.** Any agency or governing authority authorized

to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the Mississippi Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) **State agency emergency purchase procedure.** If the governing board or the executive head, or his designees, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the head of such agency, or his designees, shall file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency, which shall include a detailed description of the events leading up to the situation and the negative impact to the entity if the purchase is made following the statutory requirements set forth in paragraph (a), (b) or (c) of this section, and (ii) a certified copy of the appropriate minutes of the board of such agency requesting the emergency purchase, if applicable. Upon receipt of the statement and applicable board certification, the State Fiscal Officer, or his designees, may, in writing, authorize the purchase or repair without having to comply with competitive bidding requirements.

If the governing board or the executive head, or his designees, of any agency determines that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would threaten the health or safety of any person, or the preservation or protection of property, then the provisions in this section for competitive bidding shall not apply, and any officer or agent of the agency having general or specific authority for making the purchase or repair contract shall approve the bill presented for payment, and he shall certify in writing from whom the purchase was made, or with whom the repair contract was made.

Total purchases made under this paragraph (j) shall only be for the purpose of meeting needs created by the emergency situation. Following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be filed with the Department of Finance and Administra-

tion. Any contract awarded pursuant to this paragraph (j) shall not exceed a term of one (1) year.

Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (j).

(k) **Governing authority emergency purchase procedure.** If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority. Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (k).

(*l*) **Hospital purchase, lease-purchase and lease authorization.**

(i) The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract of purchase or lease-purchase agreement whose obligatory payment terms do not exceed five (5) years.

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (l), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.

(m) **Exceptions from bidding requirements.** Excepted from bid requirements are:

(i) **Purchasing agreements approved by department.** Pur-

chasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration.

(ii) **Outside equipment repairs.** Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; however, invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

(iii) **In-house equipment repairs.** Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired.

(iv) **Raw gravel or dirt.** Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser.

(v) **Governmental equipment auctions.** Motor vehicles or other equipment purchased from a federal agency or authority, another governing authority or state agency of the State of Mississippi, or any governing authority or state agency of another state at a public auction held for the purpose of disposing of such vehicles or other equipment. Any purchase by a governing authority under the exemption authorized by this subparagraph (v) shall require advance authorization spread upon the minutes of the governing authority to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(vi) **Intergovernmental sales and transfers.** Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public auction except as provided for in subparagraph (v) of this paragraph (m). It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

(vii) **Perishable supplies or food.** Perishable supplies or food purchased for use in connection with hospitals, the school lunch programs,

homemaking programs and for the feeding of county or municipal prisoners.

(viii) **Single source items.** Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration. Following the purchase, the executive head of the state agency, or his designees, shall file with the Department of Finance and Administration, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the source from whom it was purchased.

(ix) **Waste disposal facility construction contracts.** Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; however, in constructing such facilities, a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

(x) **Hospital group purchase contracts.** Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.

(xi) **Information technology products.** Purchases of information technology products made by governing authorities under the provisions of purchase schedules, or contracts executed or approved by the Mississippi Department of Information Technology Services and designated for use by governing authorities.

(xii) **Energy efficiency services and equipment.** Energy efficiency services and equipment acquired by school districts, community

and junior colleges, institutions of higher learning and state agencies or other applicable governmental entities on a shared-savings, lease or lease-purchase basis pursuant to Section 31-7-14.

(xiii) **Municipal electrical utility system fuel.** Purchases of coal and/or natural gas by municipally owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.

(xiv) **Library books and other reference materials.** Purchases by libraries or for libraries of books and periodicals; processed film, videocassette tapes, filmstrips and slides; recorded audiotapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this subparagraph.

(xv) **Unmarked vehicles.** Purchases of unmarked vehicles when such purchases are made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2).

(xvi) **Election ballots.** Purchases of ballots printed pursuant to Section 23-15-351.

(xvii) **Multichannel interactive video systems.** From and after July 1, 1990, contracts by Mississippi Authority for Educational Television with any private educational institution or private nonprofit organization whose purposes are educational in regard to the construction, purchase, lease or lease-purchase of facilities and equipment and the employment of personnel for providing multichannel interactive video systems (ITSF) in the school districts of this state.

(xviii) **Purchases of prison industry products by the Department of Corrections, regional correctional facilities or privately owned prisons.** Purchases made by the Mississippi Department of Corrections, regional correctional facilities or privately owned prisons involving any item that is manufactured, processed, grown or produced from the state's prison industries.

(xix) **Undercover operations equipment.** Purchases of surveillance equipment or any other high-tech equipment to be used by law enforcement agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration.

(xx) **Junior college books for rent.** Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.

(xxi) **Certain school district purchases.** Purchases of commodities made by school districts from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures for purchases of the same commodities.

(xxii) **Garbage, solid waste and sewage contracts.** Contracts for garbage collection or disposal, contracts for solid waste collection or disposal and contracts for sewage collection or disposal.

(xxiii) **Municipal water tank maintenance contracts.** Professional maintenance program contracts for the repair or maintenance of municipal water tanks, which provide professional services needed to maintain municipal water storage tanks for a fixed annual fee for a duration of two (2) or more years.

(xxiv) **Purchases of Mississippi Industries for the Blind products.** Purchases made by state agencies or governing authorities involving any item that is manufactured, processed or produced by the Mississippi Industries for the Blind.

(xxv) **Purchases of state-adopted textbooks.** Purchases of state-adopted textbooks by public school districts.

(xxvi) **Certain purchases under the Mississippi Major Economic Impact Act.** Contracts entered into pursuant to the provisions of Section 57-75-9(2), (3) and (4).

(xxvii) **Used heavy or specialized machinery or equipment for installation of soil and water conservation practices purchased at auction.** Used heavy or specialized machinery or equipment used for the installation and implementation of soil and water conservation practices or measures purchased subject to the restrictions provided in Sections 69-27-331 through 69-27-341. Any purchase by the State Soil and Water Conservation Commission under the exemption authorized by this subparagraph shall require advance authorization spread upon the minutes of the commission to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(xxviii) **Hospital lease of equipment or services.** Leases by hospitals of equipment or services if the leases are in compliance with paragraph (l)(ii).

(xxix) **Purchases made pursuant to qualified cooperative purchasing agreements.** Purchases made by certified purchasing offices of state agencies or governing authorities under cooperative purchasing agreements previously approved by the Office of Purchasing and Travel and established by or for any municipality, county, parish or state government or the federal government, provided that the notification to potential contractors includes a clause that sets forth the availability of the cooperative purchasing agreement to other governmental entities. Such purchases shall only be made if the use of the cooperative purchasing agreements is determined to be in the best interest of the governmental entity.

(xxx) **School yearbooks.** Purchases of school yearbooks by state agencies or governing authorities; provided, however, that state agencies and governing authorities shall use for these purchases the RFP process as set forth in the Mississippi Procurement Manual adopted by the Office of Purchasing and Travel.

(xxxi) **Design-build method and design build method of contracting.** Contracts entered into under the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

(xxxii) **Toll roads and bridge construction projects.** Contracts entered into under the provisions of Section 65-43-1 or 65-43-3.

(xxxiii) **Certain purchases under Section 57-1-221.** Contracts entered into pursuant to the provisions of Section 57-1-221.

(xxxiv) **Certain transfers made pursuant to the provisions of Section 57-105-1(7).** Transfers of public property or facilities under Section 57-105-1(7) and construction related to such public property or facilities.

(xxxv) **Certain purchases or transfers entered into with local electrical power associations.** Contracts or agreements entered into under the provisions of Section 55-3-33.

(xxxvi) **Certain purchases by an academic medical center or health sciences school.** Purchases by an academic medical center or health sciences school, as defined in Section 37-115-50, of commodities that are used for clinical purposes and 1. intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease, and 2. medical devices, biological, drugs and radiation-emitting devices as defined by the United States Food and Drug Administration.

(xxxvii) **Certain purchases made under the Alyce G. Clarke Mississippi Lottery Law.** Contracts made by the Mississippi Lottery Corporation pursuant to the Alyce G. Clarke Mississippi Lottery Law.

(n) **Term contract authorization.** All contracts for the purchase of:

(i) All contracts for the purchase of commodities, equipment and public construction (including, but not limited to, repair and maintenance), may be let for periods of not more than sixty (60) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office. Term contracts for a period exceeding twenty-four (24) months shall also be subject to ratification or cancellation by governing authority boards taking office subsequent to the governing authority board entering the contract.

(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public construction.

(o) **Purchase law violation prohibition and vendor penalty.** No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor

shall it be lawful for any person or concern to submit individual invoices for amounts within those authorized for a contract or purchase where the actual value of the contract or commodity purchased exceeds the authorized amount and the invoices therefor are split so as to appear to be authorized as purchases for which competitive bids are not required. Submission of such invoices shall constitute a misdemeanor punishable by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for thirty (30) days in the county jail, or both such fine and imprisonment. In addition, the claim or claims submitted shall be forfeited.

(p) **Electrical utility petroleum-based equipment purchase procedure.** When in response to a proper advertisement therefor, no bid firm as to price is submitted to an electric utility for power transformers, distribution transformers, power breakers, reclosers or other articles containing a petroleum product, the electric utility may accept the lowest and best bid therefor although the price is not firm.

(q) **Fuel management system bidding procedure.** Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (q), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

(r) **Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars ($50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than the amount provided in paragraph (c) of this section. Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors

determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

(s) **Minority set-aside authorization.** Notwithstanding any provision of this section to the contrary, any agency or governing authority, by order placed on its minutes, may, in its discretion, set aside not more than twenty percent (20%) of its anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the Department of Finance and Administration and shall be subject to bid requirements under this section. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder. For the purposes of this paragraph, the term "minority business" means a business which is owned by a majority of persons who are United States citizens or permanent resident aliens (as defined by the Immigration and Naturalization Service) of the United States, and who are Asian, Black, Hispanic or Native American, according to the following definitions:

(i) "Asian" means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(ii) "Black" means persons having origins in any black racial group of Africa.

(iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.

(iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

(t) **Construction punch list restriction.** The architect, engineer or other representative designated by the agency or governing authority that is contracting for public construction or renovation may prepare and submit to

the contractor only one (1) preliminary punch list of items that do not meet the contract requirements at the time of substantial completion and one (1) final list immediately before final completion and final payment.

(u) **Procurement of construction services by state institutions of higher learning.** Contracts for privately financed construction of auxiliary facilities on the campus of a state institution of higher learning may be awarded by the Board of Trustees of State Institutions of Higher Learning to the lowest and best bidder, where sealed bids are solicited, or to the offeror whose proposal is determined to represent the best value to the citizens of the State of Mississippi, where requests for proposals are solicited.

(v) **Insurability of bidders for public construction or other public contracts.** In any solicitation for bids to perform public construction or other public contracts to which this section applies, including, but not limited to, contracts for repair and maintenance, for which the contract will require insurance coverage in an amount of not less than One Million Dollars ($1,000,000.00), bidders shall be permitted to either submit proof of current insurance coverage in the specified amount or demonstrate ability to obtain the required coverage amount of insurance if the contract is awarded to the bidder. Proof of insurance coverage shall be submitted within five (5) business days from bid acceptance.

(w) **Purchase authorization clarification.** Nothing in this section shall be construed as authorizing any purchase not authorized by law.

HISTORY: Codes, 1942, § 9024-08; Laws, 1962, ch. 497, § 8; Laws, 1980, ch. 440, § 6; Laws, 1981, ch. 306, § 2; Laws, 1982, ch. 449, § 1; Laws, 1983, ch. 330, § 3, ch. 341; Laws, 1984, ch. 363; Laws, 1984, ch. 480, § 3; Laws, 1984, ch. 488, § 158; Laws, 1985, ch. 493, § 6; Laws, 1986, ch. 398; Laws, 1986, ch. 489, § 14; Laws, 1988, ch. 351; Laws, 1988, ch. 589, § 23; Laws, 1988 Ex Sess, ch. 14, § 65; Laws, 1989, ch. 349, § 1; Laws, 1989, ch. 394, § 3; Laws, 1990, ch. 534, § 27; Laws, 1990, ch. 545, § 2; Laws, 1990, ch. 561, § 2; Laws, 1990, 1st Ex Sess, ch. 51, § 2; Laws, 1991, ch. 337, § 1; Laws, 1991, ch. 523, § 1; Laws, 1992, ch. 571 § 3; Laws, 1993, ch. 418, § 2; Laws, 1993, ch. 617, § 12; Laws, 1993, ch. 556, § 3; Laws, 1994, ch. 471, § 2; Laws, 1994 Ex Sess, ch. 26, § 22; Laws, 1996, ch. 495, § 1; Laws, 1997, ch. 593, § 1; Laws, 1998, ch. 574, § 6; Laws, 1999, ch. 407, § 1; Laws, 1999, ch. 459, § 1; Laws, 2000, ch. 428, § 3; Laws, 2000, ch. 593, § 9; Laws, 2000, 3rd Ex Sess, ch. 1, § 13; Laws, 2001, ch. 333, § 2; Laws, 2002, ch. 563, § 1; Laws, 2003, ch. 539, § 5; Laws, 2004, ch. 394, § 1; Laws, 2004, ch. 577, § 2; Laws, 2004, 3rd Ex Sess, ch. 1, § 190; Laws, 2005, ch. 504, § 5; Laws, 2006, ch. 446, § 1; Laws, 2007, ch. 423, § 1; Laws, 2007, ch. 424, § 2; Laws, 2007, ch. 494, § 7; Laws, 2007, ch. 582, § 22; Laws, 2008, ch. 417, § 1; Laws, 2008, ch. 469, § 1; brought forward without change, Laws, 2008, ch. 544, § 4; Laws, 2009, ch. 538, § 1; Laws, 2010, ch. 301, § 7; Laws, 2010, ch. 533, § 26; Laws, 2011, ch. 485, § 2; Laws, 2012, ch. 446, § 2; Laws, 2013, ch. 390, § 1; Laws, 2013, ch. 466, § 3; Laws, 2013, ch. 519, § 1; Laws, 2015, ch. 488, § 1; Laws, 2017, ch. 398, § 5; Laws, 2017, ch. 400, § 16; Laws, 2017, ch. 411, § 1, eff from and after Jan. 1, 2018; Laws, 2018, 1st Ex Sess, ch. 2, § 51, eff from and after September 1, 2018; Laws, 2020, ch. 488, § 10, eff from and after passage, (became law without the Governor's signature on July 9, 2020); Laws, 2021, ch. 451, § 4, eff from and after July 1, 2021.

Editor's Notes — This section is set out above to correct errors in the section as it appeared in the 2021 Volume 9 Cumulative Supplement.

TITLE 37.

EDUCATION

CHAPTER 9.

DISTRICT SUPERINTENDENTS, PRINCIPALS, TEACHERS, AND OTHER EMPLOYEES

IN GENERAL

§ 37-9-69. General duties of superintendents, principals and teachers.

JUDICIAL DECISIONS

ANALYSIS

6. Breach of duty not found.
7. Breach of duty alleged.

6. Breach of duty not found.

There were no genuine issues of material fact as to whether a school district had breached its ministerial duties to a student who injured her knee while being chased by a second student, as the evidence showed that after being advised by the first student's mother of an alleged threat by the second student, school personnel took reasonable steps to address the potential threat within the limited time available to them. Robertson v. Houston Miss. Pub. Sch. Dist., — So. 3d —, 2021 Miss. App. LEXIS 510 (Miss. Ct. App. Dec. 14, 2021).

7. Breach of duty alleged.

A student's suit brought by her mother against the school district for failing to prevent a fellow student from attacking her adequately stated a cause of action for negligence, because the complaint alleged the district breached its ministerial duty under Miss. Code Ann. § 37-9-69 to use ordinary care and to take reasonable steps to minimize foreseeable risks to her. J.D. v. McComb Sch. Dist., — So. 3d —, 2022 Miss. App. LEXIS 85 (Miss. Ct. App. Mar. 15, 2022).

TITLE 41.

PUBLIC HEALTH

Chapter 119. Health Information Technology Act. 41-119-1

CHAPTER 29.

POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES

ARTICLE 3.

UNIFORM CONTROLLED SUBSTANCES LAW.

§ 41-29-139. Prohibited acts; penalties.

JUDICIAL DECISIONS

ANALYSIS

IV. EVIDENCE.

26. Sufficient evidence—possession.
27. —Sale or distribution, or intent as to same.

IV. EVIDENCE.

26. Sufficient evidence—possession.

27. —Sale or distribution, or intent as to same.

Sufficient evidence supported the jury's conviction of three counts of sale of a controlled substance where the facts were almost identical to a case where a jury found a defendant guilty after watching video evidence of a buy and hearing testimony from narcotics agents and a crime lab drug analyst. Cork v. State, 329 So. 3d 1183, 2021 Miss. LEXIS 369 (Miss. 2021).

§ 41-29-147. Second and subsequent offenses.

JUDICIAL DECISIONS

2. Sentence.

Defendant's argument that the trial court made an error of law in not realizing that Miss. Code Ann. § 41-29-147 gave him discretion as to whether or not to apply the enhanced sentence was rejected because the trial judge indicated elsewhere in the record his full understanding that he had options when it came to sentencing defendant. Cork v. State, 329 So. 3d 1183, 2021 Miss. LEXIS 369 (Miss. 2021).

CHAPTER 41.

SURGICAL OR MEDICAL PROCEDURES; CONSENTS

UNIFORM HEALTH-CARE DECISIONS ACT

§ 41-41-203. Definitions.

JUDICIAL DECISIONS

3. Primary physician.

Physician was the father's primary physician when he determined that the father lacked capacity such that his son was qualified to act as his father's health-care surrogate because the physician undertook responsibility for the father's primary health care contemporaneously with his admission to the nursing home. The physician's use of the phrase "is unable to sign nursing home admission papers" supported an interpretation that he made his incapacity determination before the son signed the admission statement so as to confirm the necessity of a surrogate to execute the admission papers. Estate of Humphrey v. Tunica Cty. Health & Rehab LLC, 329 So. 3d 563, 2021 Miss. App. LEXIS 407 (Miss. Ct. App. 2021).

§ 41-41-205. Individual instructions; power of attorney; decisions by primary physician; agents; guardians; validity.

JUDICIAL DECISIONS

1. Validity.

Mentally competent patient may orally grant authority to her daughter to sign documents required for admission to a nursing home, and the circuit court erred by holding that a written instrument was required; the nursing home failed to provide sufficient proof that the patient gave her daughter the authority to bind her to arbitrate any future disputes that may arise concerning her stay, and because the nursing home did not prove the daughter had authority to sign the arbitration agreement, the denial of the nursing home's motion to compel arbitration was proper. Diversicare of Meridian LLC v. Shelton, 334 So. 3d 487, 2022 Miss. App. LEXIS 56 (Miss. Ct. App. 2022).

§ 41-41-211. Surrogates.

JUDICIAL DECISIONS

3. Authority to bind.

Mentally competent patient may orally grant authority to her daughter to sign documents required for admission to a nursing home, and the circuit court erred by holding that a written instrument was required; the nursing home failed to provide sufficient proof that the patient gave her daughter the authority to bind her to arbitrate any future disputes that may arise concerning her stay, and because the nursing home did not prove the daughter had authority to sign the arbitration agreement, the denial of the nursing home's motion to compel arbitration was proper. Diversicare of Meridian LLC v. Shelton, 334 So. 3d 487, 2022 Miss. App. LEXIS 56 (Miss. Ct. App. 2022).

Physician was the father's primary physician when he determined that the father lacked capacity such that his son was qualified to act as his father's health-care

surrogate because the physician undertook responsibility for the father's primary health care contemporaneously with his admission to the nursing home. The physician's use of the phrase "is unable to sign nursing home admission papers" supported an interpretation that he made his incapacity determination before the son signed the admission statement so as to confirm the necessity of a surrogate to execute the admission papers. Estate of Humphrey v. Tunica Cty. Health & Rehab LLC, 329 So. 3d 563, 2021 Miss. App. LEXIS 407 (Miss. Ct. App. 2021).

TITLE 43.

PUBLIC WELFARE

Chapter 21. Youth Court. 43-21-1

CHAPTER 13.

MEDICAL ASSISTANCE FOR THE AGED; MEDICAID

ARTICLE 3.

MEDICAID.

§ 43-13-117. Types of care and services for which financial assistance furnished [Repealed effective July 1, 2024].

JUDICIAL DECISIONS

1. In general.

In the mental health centers' action against an HMO, the trial court properly enjoined the HMO from imposing a 5 percent rate cut because Miss. Code Ann. § 43-13-117(B) applied only to the Division of Medicaid's managed care program; no statutory language permitted managed care organizations to apply the 5 percent rate reduction. United Healthcare of Miss. Inc. v. Mississippi's Cmty. Mental Health Comm'ns, — So. 3d —, 2022 Miss. LEXIS 82 (Miss. Mar. 24, 2022).

CHAPTER 19.

SUPPORT OF NATURAL CHILDREN

CHILD SUPPORT AWARD GUIDELINES

§ 43-19-101. Child support award guidelines [Effective until July 1, 2022].

JUDICIAL DECISIONS

ANALYSIS

2. Applicability.
3. Guidelines; adherence to.
5. Findings of fact.

2. Applicability.

As the requirements of Miss. Code Ann. § 43-19-101(6) were mandatory, the chancellor erred by not providing for the child's medical costs or health insurance in the final judgment. Savell v. Manning, 325 So. 3d 1208, 2021 Miss. App. LEXIS 356 (Miss. Ct. App. 2021).

Chancery court properly included a husband's military benefits in calculating his adjusted gross income. The husband's

military entitlements were a form of earned income under Miss. Code Ann. § 43-19-101(3)(a). Jefferson v. Jefferson, 327 So. 3d 1085, 2021 Miss. App. LEXIS 380 (Miss. Ct. App. 2021).

3. Guidelines; adherence to.

Chancellor did not abuse her discretion by setting child support based on the statutory guidelines because she ordered the father to pay 20% of his adjusted gross income as reflected by his Rule 8.05 financial statement, which was in accordance with the statutory guidelines. Wooten v. Wooten, 333 So. 3d 610, 2022 Miss. App. LEXIS 25 (Miss. Ct. App. 2022).

5. Findings of fact.

Chancellor's child support award was supported by substantial evidence because the chancellor considered testimony regarding the cost of the children's activities as well as an exhibit admitted into evidence listing the children's shared expenses. Denham v. Denham, — So. 3d —, 2022 Miss. App. LEXIS 34 (Miss. Ct. App. Feb. 1, 2022).

§ 43-19-103. Criteria for overcoming presumption that guidelines are appropriate.

JUDICIAL DECISIONS

1. In general.

Both parties agreed to the visitation schedule that gave father custody approximately 41 percent of the month and thus the chancery court was manifestly in error to say that father alone had requested this visitation; moreover, such a reason to deny a deviation in child support contradicted the statute, under which deviations should be considered where the noncustodial parent spent a great deal of time with the children thereby reducing the financial expenditures incurred by the custodial parent. Doe v. Doe, — So. 3d —, 2021 Miss. App. LEXIS 473 (Miss. Ct. App. Nov. 9, 2021).

Chancery court failed to articulate why a deviation from the child support obligations was arbitrary in this case; there was a clear reason to consider deviation from the child support guideline given the liberal visitation schedule itself. It was logical that father, as the non-custodial parent, would incur greater expense due to his exercise of the agreed-upon visitation plan, and mother would have less expenses. A downward deviation would not be arbitrary in this case. Doe v. Doe, — So. 3d —, 2021 Miss. App. LEXIS 473 (Miss. Ct. App. Nov. 9, 2021).

There was no evidence to support the chancery court's finding of possible harm to the children by reducing father's child support obligation, and even the chancery court itself did not cite any evidence of potential harm; the court was manifestly wrong and abused its discretion in refusing father's request. Doe v. Doe, — So. 3d —, 2021 Miss. App. LEXIS 473 (Miss. Ct. App. Nov. 9, 2021).

There is no requirement in the statute that conditions deviations on a non-custodial parent's making additional voluntary payments. Doe v. Doe, — So. 3d —, 2021 Miss. App. LEXIS 473 (Miss. Ct. App. Nov. 9, 2021).

CHAPTER 21.
YOUTH COURT

Summons. 43-21-501

JURISDICTION

§ 43-21-151. Jurisdiction.

JUDICIAL DECISIONS

I. Under Current Law.

3. Construction and application.

Defendant was properly sentenced as a habitual offender because his prior felony cocaine convictions were not void as a matter of law as he committed them in 1994 after his 17th birthday, so the circuit court had jurisdiction over him under Miss. Code Ann. § 43-21-151(2) (Supp. 1994), and there was nothing in the record to show that the trial judge found the case to ben an exceedingly rare circumstance in which imposing the mandatory maximum sentence led to an inference of gross disproportionality. Pulliam v. State, 328 So. 3d 93, 2021 Miss. LEXIS 305 (Miss. 2021).

SUMMONS

Sec.
43-21-501. Persons on whom served.

§ 43-21-501. Persons on whom served.

When a petition has been filed and the date of hearing has been set by the youth court, the judge or his designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing:

(a) The child named in the petition;

(b) The person or persons who have custody or control of the child;

(c) The parent or guardian of the child if such parent or guardian does not have custody of the child; and

(d) any other person whom the court deems necessary.

HISTORY: Laws, 1979, ch. 506, § 53, eff from and after July 1, 1979.

Editor's Notes — This section is set out above to correct errors in the section as it appeared in the 2021 Replacement Volume 11A.

§ 43-21-507. Time of service.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

Any error, if any, in the youth court's failure to ascertain whether the notice requirements had been complied with was harmless because a mother was represented by counsel at the adjudication hearing, and at no point did counsel object to or make any complaint about the youth court's failure to comply with the statute; the mother was personally served for the adjudication hearing ten days prior to the adjudication hearing, and she was present at the adjudication hearing. M.A.S. v. Lamar County Dep't of Child Prot. Servs., — So. 3d —, 2021 Miss. App. LEXIS 385 (Miss. Ct. App. Sept. 21, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 84 (Miss. 2022).

ADJUDICATION

§ 43-21-557. Order of proceedings.

JUDICIAL DECISIONS

I. Under Current Law.

2. Notice.

Any error, if any, in the youth court's failure to ascertain whether the notice requirements had been complied with was harmless because a mother was represented by counsel at the adjudication hearing, and at no point did counsel object to or make any complaint about the youth court's failure to comply with the statute; the mother was personally served for the adjudication hearing ten days prior to the adjudication hearing, and she was present at the adjudication hearing. M.A.S. v. Lamar County Dep't of Child Prot. Servs., — So. 3d —, 2021 Miss. App. LEXIS 385 (Miss. Ct. App. Sept. 21, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 84 (Miss. 2022).

DISPOSITION

§ 43-21-601. Scheduling of disposition hearing.

JUDICIAL DECISIONS

1. In general.

Mother waived her argument regarding the youth court's failure to comply with subsection (1) because she failed to perfect her appeal from the adjudication order or the disposition order, and she was represented by counsel throughout the adjudication process, but counsel never made an objection to the failure to have a separate disposition hearing; the mother failed to file any post-trial motions to challenge the youth court's failure to conduct a separate disposition hearing. M.A.S. v. Lamar County Dep't of Child Prot. Servs., — So. 3d —, 2021 Miss. App. LEXIS 385 (Miss. Ct. App. Sept. 21, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 84 (Miss. 2022).

CHAPTER 47.

MISSISSIPPI VULNERABLE PERSONS ACT

§ 43-47-5. Definitions.

JUDICIAL DECISIONS

4. Sufficiency of evidence.

Son could not handle his own financial affairs and had been diagnosed as having mental retardation resulting in need for assistance in managing, planning, and execution of financial issues, and it was proved he could not write, could barely read, and could not shop by himself because he did not understand the concept of purchase pricing and obtaining change; the son created a genuine issue of material fact as to his unsoundness of mind. Parker v. Ross, — So. 3d —, 2022 Miss. App. LEXIS 155 (Miss. Ct. App. May 10, 2022).

§ 43-47-19. Prohibition against abuse, neglect, or exploitation; penalties; relation to other laws.

JUDICIAL DECISIONS

ANALYSIS

4. Double jeopardy.
5. Evidence sufficient

4. Double jeopardy.

Defendant's convictions for aggravated assault and abuse of a vulnerable person did not violate double jeopardy; victim's age was not a prerequisite to finding defendant guilty of aggravated assault. Instead, the victim's age was considered an aggravating circumstance once the elements of the crime were met. The aggravator of a conviction for attacking a person 65 years or older does not delineate an independent substantive offense from the crime of aggravated assault, and so does not trigger a violation of double jeopardy. Jones v. State, 326 So. 3d 521, 2021 Miss. App. LEXIS 379 (Miss. Ct. App. 2021).

5. Evidence sufficient

Sufficient evidence supported defendant's convictions of aggravated assault and abuse of a vulnerable person; the victim was hit with a stick on her front porch, and while she did not see her attacker, she saw him flee in her neighbor's daughter's car, as did another neighbor, and defendant was later pulled over driving that car. Although he argued that there was no DNA evidence, the State was given the benefit of all reasonable inferences. Jones v. State, 326 So. 3d 521, 2021 Miss. App. LEXIS 379 (Miss. Ct. App. 2021).

TITLE 45.

PUBLIC SAFETY AND GOOD ORDER

CHAPTER 33.

REGISTRATION OF SEX OFFENDERS

§ 45-33-47. Petition for relief from duty to register; grounds; minimum period of continuing registration based on three-tier classification of offenses; certain offenders subject to lifetime registration; certain offenders subject to electronic monitoring.

JUDICIAL DECISIONS

2. Violation of similar law of another jurisdiction.

Denial of petitioner's request to be removed from sex offender registration requirements was proper because registration in any other jurisdiction did not reduce the minimum time requirement for maintaining registration in Mississippi, so petitioner's release from Massachusetts registration requirements did not require release in Mississippi, and the Mississippi Sex Offender Registry Law provided no credit for registration periods maintained in other states. Lozier v. State, 284 So. 3d 745, 2019 Miss. LEXIS 391 (Miss. 2019).

TITLE 47.

PRISONS AND PRISONERS; PROBATION AND PAROLE

Chapter 7. Probation and Parole. 47-7-1

CHAPTER 5.

CORRECTIONAL SYSTEM

OFFENDERS

§ 47-5-139. Certain inmates ineligible for earned time allowance; commutation to be based on total term of sentences; forfeiture of earned time in event of escape.

JUDICIAL DECISIONS

4. Eligibility for release.

Defendant was sentenced as a habitual offender, making him ineligible for conditional release under the statute, and when he petitioned for a conditional release, he had only finished serving the first thirty-seven years of his sentence that were to be served day-for-day because he pleaded guilty to and was sentenced for a sex crime of rape; in addition to being a habitual offender, defendant was serving consecutive sentences for multiple offenses, and the denial of his petition for conditional release was denied because he was not serving a life sentence, and thus he did not qualify for conditional release. Keyes v. State, 331 So. 3d 52, 2021 Miss. App. LEXIS 458 (Miss. Ct. App. 2021).

ALCOHOLIC BEVERAGES, CONTROLLED SUBSTANCES, NARCOTIC DRUGS, WEAPONS, AND OTHER CONTRABAND

§ 47-5-193. Prohibitions generally; circuit court authorized to order disabling of contraband cell phone service from carrier.

JUDICIAL DECISIONS

ANALYSIS

5. In general.
7. Applicability.

5. In general.

In a case in which plaintiff sued a pharmacy for allegedly mis-filling a prescription, the Supreme Court found that plaintiff's injuries arose out of the course of professional services that may be performed only by or through a licensed pharmacist. Therefore, the circuit court properly determined that plaintiff's claims were untimely, having been filed beyond the two-year period found in Miss. Code Ann. § 15-1-36. Wolfe v. Delta Disc. Drugs, Inc., 291 So. 3d 339, 2020 Miss. LEXIS 71 (Miss. 2020).

Plaintiff's claims against a pharmacy

for allegedly mis-filling a prescription based upon the doctrine of respondeat superior were subject to the two-year medical-malpractice statute of limitations. Wolfe v. Delta Disc. Drugs, Inc., 291 So. 3d 339, 2020 Miss. LEXIS 71 (Miss. 2020).

7. Applicability.

While obviously harsh, defendant's twelve-year sentence for possessing a cell phone in a correctional facility was not grossly disproportionate. The sentence was within the statutory limits and was also commensurate with other sentences imposed for the same crime. Nash v. State, 293 So. 3d 265, 2020 Miss. LEXIS 3 (Miss. 2020).

JOINT STATE-COUNTY WORK PROGRAM

§ 47-5-451. Joint state-county work programs; eligibility; limitations.

Editor's Notes — Laws of 2021, ch. 429, § 1, provides:

"SECTION 1. (1) The Sheriff of Rankin County is authorized to establish a Pilot Work Release Program. No person sentenced for a crime listed in Section 97-3-2 shall be eligible for participation in the program established under this act. During the pilot phase of the program, there shall be a limit of twenty-five (25) people in the program at a time.

"The sheriff shall collect and maintain data which shall be shared semiannually with the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) and the Corrections and Criminal Justice Oversight Task Force in sortable electronic format. The first report shall be made before January 15, 2022, and in six-month intervals thereafter. The data shall include:

"(a) Total number of participants at the beginning of each month by race, gender, and offenses charged;

"(b) Total number of participants at the end of each month by race, gender, and offenses charged;

"(c) Total number of participants who began the program in each month by race, gender, and offenses charged;

"(d) Total number of participants who successfully completed the program in each month by race, gender, and offenses charged;

"(e) Total number of participants who left the program in each month and reason for leaving by race, gender, and offenses charged;

"(f) Total number of participants who were arrested for a new criminal offense while in the program in each month by race, gender, and offenses charged;

"(g) Total number of participants who were convicted of a new crime while in the program in each month by race, gender, and offenses charged;

"(h) Total number of participants who completed the program and were convicted of a new crime within three (3) years of completing the program;

"(i) Total amount earned by participants and how the earnings were distributed in each month;

"(j) Results of any initial risk and needs assessments conducted on each participant by race, gender, and offenses charged; and

"(k) Any other data or information as requested by the task force.

"(3) Any person who has been sentenced to confinement in jail or who has been sentenced for a felony conviction but is confined in a jail may request assignment to the work release program established under this act. Admission to the program shall be in the discretion of the sheriff. The sheriff may further authorize the offender to participate in educational or other rehabilitative programs designed to supplement his

work release employment or to prepare the person for successful reentry. No offender shall be eligible for this program if he has more than one (1) year remaining on their sentence.

"(4) The sheriff shall adopt and publish rules and regulations prior to accepting inmates. These rules and regulations shall at a minimum include all requirements for work release programs established pursuant to Sections 47-5-451 through 47-5-471. Participating employers shall pay no less than the prevailing wage for the position and shall under no circumstance pay less than the federal minimum wage.

"(5) Any offender assigned to such a program by the sheriff who, without proper authority or just cause, leaves the area to which he has been assigned to work or attend educational or other rehabilitative programs, or leaves the vehicle or route of travel involved in his or her going to or returning from such place, will be guilty of escape as provided in Section 97-9-49. An offender who is found guilty under this section shall be ineligible for further participation in a work release program during his or her current term of confinement.

"(6) The offender shall maintain an account through a local financial institution and shall provide a copy of a check stub to the sheriff. The offender may be required to pay up to twenty-five percent (25%) of his wages after mandatory deductions for the following purposes:

"(a) To pay support of dependents or to the Mississippi Department of Human Services on behalf of dependents as may be ordered by a judge of competent jurisdiction; and

"(b) To pay any fines, restitution, or costs as ordered by the court to include any fines and fees associated with obtaining a valid driver's license upon release.

"(7) The inmate shall have access to his account to purchase incidental expenses.

"(8) The Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) shall conduct a review of the work release program established under this act and produce a report to the Legislature on their effectiveness by December 1, 2022. The PEER Committee shall seek the assistance of the Corrections and Criminal Justice Task Force and may seek assistance from any other criminal justice experts it deems necessary during its review.

"(9) This section shall stand repealed on July 1, 2022."

This Editor's Note is set out above to correct errors in the second paragraph of (1) and in subsection (4) as they appeared in the 2021 Volume 11B Cumulative Supplement.

ADMINISTRATIVE REVIEW PROCEDURE

§ 47-5-801. Authority to adopt administrative review procedure.

JUDICIAL DECISIONS

1. Administrative review procedures.

Circuit court did not err in considering an inmate's complaint as a request for judicial review of an administrative decision because the inmate's complaint set forth the same set of facts provided in his original Administrative Remedy Program (ARP) grievance and also sought the same type of relief he was denied through the ARP process. Hooghe v. Shaw, 2021 Miss. App. LEXIS 343 (Miss. Ct. App. Aug. 24, 2021).

§ 47-5-807. Judicial review of agency decision.

JUDICIAL DECISIONS

1. Construction and applicability.

Circuit court did not err in considering an inmate's complaint as a request for judicial review of an administrative decision because the inmate's complaint set forth the same set of facts provided in his original Administrative Remedy Program (ARP) grievance and also sought the same type of relief he was denied through the ARP process. Hooghe v. Shaw, 2021 Miss. App. LEXIS 343 (Miss. Ct. App. Aug. 24, 2021).

CHAPTER 7.

PROBATION AND PAROLE

Probation and Parole Law. 47-7-1

PROBATION AND PAROLE LAW

Sec.
47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date; completion of drug and alcohol rehabilitation program for offenders convicted or certain drug or alcohol offenses [Repealed effective July 1, 2024].

§ 47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date; completion of drug and alcohol rehabilitation program for offenders convicted or certain drug or alcohol offenses [Repealed effective July 1, 2024].

(1) Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi Department of Corrections for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the department, and who has served the minimum required time for parole eligibility, may be released on parole as set forth herein:

(a) **Habitual offenders.** Except as provided by Sections 99-19-81 through 99-19-87, no person sentenced as a confirmed and habitual criminal shall be eligible for parole;

(b) **Sex offenders.** Any person who has been sentenced for a sex offense as defined in Section 45-33-23(h) shall not be released on parole except for a person under the age of nineteen (19) who has been convicted under Section 97-3-67;

(c) **Capital offenders.** No person sentenced for the following offenses shall be eligible for parole:

(i) Capital murder committed on or after July 1, 1994, as defined in Section 97-3-19(2);

(ii) Any offense to which an offender is sentenced to life imprisonment under the provisions of Section 99-19-101; or

(iii) Any offense to which an offender is sentenced to life imprisonment without eligibility for parole under the provisions of Section 99-19-101, whose crime was committed on or after July 1, 1994;

(d) **Murder.** No person sentenced for murder in the first degree, whose crime was committed on or after June 30, 1995, or murder in the second degree, as defined in Section 97-3-19, shall be eligible for parole;

(e) **Human trafficking.** No person sentenced for human trafficking, as defined in Section 97-3-54.1, whose crime was committed on or after July 1, 2014, shall be eligible for parole;

(f) **Drug trafficking.** No person sentenced for trafficking and aggravated trafficking, as defined in Section 41-29-139(f) through (g), shall be eligible for parole;

(g) **Offenses specifically prohibiting parole release.** No person shall be eligible for parole who is convicted of any offense that specifically prohibits parole release;

(h)(i) **Offenders eligible for parole consideration for offenses committed after June 30, 1995.** Except as provided in paragraphs (a) through (g) of this subsection, offenders may be considered eligible for parole release as follows:

1. **Nonviolent crimes.** All persons sentenced for a nonviolent offense shall be eligible for parole only after they have served twenty-five percent (25%) or ten (10) years, whichever is less, of the sentence or sentences imposed by the trial court. For purposes of this paragraph, "nonviolent crime" means a felony not designated as a crime of violence in Section 97-3-2.

2. **Violent crimes.** A person who is sentenced for a violent offense as defined in Section 97-3-2, except robbery with a deadly weapon as defined in Section 97-3-79, drive-by shooting as defined in Section 97-3-109, and carjacking as defined in Section 97-3-117, shall be eligible for parole only after having served fifty percent (50%) or twenty (20) years, whichever is less, of the sentence or sentences imposed by the trial court. Those persons sentenced for robbery with a deadly weapon as defined in Section 97-3-79, drive-by shooting as defined in Section 97-3-109, and carjacking as defined in Section 97-3-117, shall be eligible for parole only after having served sixty percent (60%) or twenty-five (25) years, whichever is less, of the sentence or sentences imposed by the trial court.

3. **Nonviolent and nonhabitual drug offenses.** A person who has been sentenced to a drug offense pursuant to Section 41-29-139(a) through (d), whose crime was committed after June 30, 1995, shall be eligible for parole only after he has served twenty-five percent (25%) or ten (10) years, whichever is less, of the sentence or sentences imposed.

(ii) **Parole hearing required.** All persons eligible for parole under subparagraph (i) of this paragraph (h) who are serving a sentence or

sentences for a crime of violence, as defined in Section 97-3-2, shall be required to have a parole hearing before the Parole Board pursuant to Section 47-7-17, prior to parole release.

(iii) **Geriatric parole.** Notwithstanding the provisions in subparagraph (i) of this paragraph (h), a person serving a sentence who has reached the age of sixty (60) or older and who has served no less than ten (10) years of the sentence or sentences imposed by the trial court shall be eligible for parole. Any person eligible for parole under this subparagraph (iii) shall be required to have a parole hearing before the board prior to parole release. No inmate shall be eligible for parole under this subparagraph (iii) of this paragraph (h) if:

1. The inmate is sentenced as a habitual offender under Sections 99-19-81 through 99-19-87;

2. The inmate is sentenced for a crime of violence under Section 97-3-2;

3. The inmate is sentenced for an offense that specifically prohibits parole release;

4. The inmate is sentenced for trafficking in controlled substances under Section 41-29-139(f);

5. The inmate is sentenced for a sex crime; or

6. The inmate has not served one-fourth (1/4) of the sentence imposed by the court.

(iv) **Parole consideration as authorized by the trial court.** Notwithstanding the provisions of paragraph (a) of this subsection, any offender who has not committed a crime of violence under Section 97-3-2 and has served twenty-five percent (25%) or more of his sentence may be paroled by the State Parole Board if, after the sentencing judge or if the sentencing judge is retired, disabled or incapacitated, the senior circuit judge authorizes the offender to be eligible for parole consideration; or if the senior circuit judge must be recused, another circuit judge of the same district or a senior status judge may hear and decide the matter. A petition for parole eligibility consideration pursuant to this subparagraph (iv) shall be filed in the original criminal cause or causes, and the offender shall serve an executed copy of the petition on the District Attorney. The court may, in its discretion, require the District Attorney to respond to the petition.

(2) The State Parole Board shall, by rules and regulations, establish a method of determining a tentative parole hearing date for each eligible offender taken into the custody of the Department of Corrections. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. Except as provided in Section 47-7-18, the parole hearing date shall occur when the offender is within thirty (30) days of the month of his parole eligibility date. Any parole eligibility date shall not be earlier than as required in this section.

(3) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction

of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section.

(4) Any inmate within forty-eight (48) months of his parole eligibility date and who meets the criteria established by the classification board shall receive priority for placement in any educational development and job-training programs that are part of his or her parole case plan. Any inmate refusing to participate in an educational development or job-training program, including, but not limited to, programs required as part of the case plan, shall be in jeopardy of noncompliance with the case plan and may be denied parole.

(5) In addition to other requirements, if an offender is convicted of a drug or driving under the influence felony, the offender must complete a drug and alcohol rehabilitation program prior to parole, or the offender shall be required to complete a postrelease drug and alcohol program as a condition of parole.

(6) Except as provided in subsection (1)(a) through (h) of this section, all other persons shall be eligible for parole after serving twenty-five percent (25%) of the sentence or sentences imposed by the trial court, or, if sentenced to thirty (30) years or more, after serving ten (10) years of the sentence or sentences imposed by the trial court.

(7) The Corrections and Criminal Justice Oversight Task Force established in Section 47-5-6 shall develop and submit recommendations to the Governor and to the Legislature annually on or before December 1st concerning issues relating to juvenile and habitual offender parole reform and to review and monitor the implementation of Chapter 479, Laws of 2021.

(8) The amendments contained in Chapter 479, Laws of 2021, shall apply retroactively from and after July 1, 1995.

(9) Notwithstanding provisions to the contrary in this section, a person who was sentenced before July 1, 2021, may be considered for parole if the person's sentence would have been parole eligible before July 1, 2021.

(10) This section shall stand repealed on July 1, 2024.

HISTORY: Codes, 1942, § 4004-03; Laws, 1944, ch. 334, § 2; Laws, 1946, ch. 486, § 2; Laws, 1950, ch. 524, § 4; Laws, 1958, ch. 233, § 2; Laws, 1964, ch. 366; Laws, 1976, ch. 440, § 79; Laws, 1976, ch. 470, § 5; Laws, 1980, ch. 511; reenacted, Laws, 1981, ch. 465, § 92; Laws, 1982, ch. 431, § 1; reenacted, Laws, 1984, ch. 471, § 102; Laws, 1985, ch. 499, § 16; Laws, 1985, ch. 531, § 3; reenacted and amended, Laws, 1986, ch. 413, § 102; Laws, 1986, ch. 435, § 1; Laws, 1989, 1st Ex Sess, ch. 3, § 4; Laws, 1993, ch. 443, § 1; Laws, 1994, ch. 566, § 2; Laws, 1994 Ex Sess, ch. 25, § 5; Laws, 1995, ch. 575, § 2; Laws, 1995, ch. 596, § 3; Laws, 2001, ch. 393, § 11; Laws, 2002, ch. 413, § 1; Laws, 2004, ch. 407, § 1; Laws, 2004, ch. 520, § 1; Laws, 2004, ch. 569, § 1; Laws, 2005, ch. 503, § 1; Laws, 2008, ch. 438, § 1; Laws, 2010, ch. 536, § 4; Laws, 2014, ch. 457, § 40; Laws, 2015, ch. 448, § 1; Laws, 2016, ch. 506, § 1, eff from and after passage (approved May 13, 2016); Laws, 2018, ch. 416, § 5, eff from and after July 1, 2018; Laws, 2020, ch. 467, § 1, eff from and after July 1, 2020; Laws, 2021, ch. 479, § 2, eff from and after July 1, 2021.

Editor's Notes — This section is set out above to correct a punctuation error in subsection (8) as it appeared in the 2021 Volume 11B Cumulative Supplement.

§ 47-7-33. Power of court to suspend sentence and place defendant on probation; notice to Department of Corrections; support payments.

JUDICIAL DECISIONS

6. Propriety of particular sentences — Timeliness of petition for.

Circuit court acted appropriately in sentencing defendant to a term of ten years in custody with four years suspended, following defendant's conviction for shooting into a dwelling house, because the sentence did not exceed the maximum statutory penalty, and, although defendant was placed on five years of supervised probation, those years were not included in the calculation of the sentence. Dorsey v. State, 310 So. 3d 1238, 2021 Miss. App. LEXIS 55 (Miss. Ct. App. 2021).

§ 47-7-37. Period of probation; arrest, revocation and recommitment for violation of probation or postrelease supervision; hearing; revocation of probation for technical violation; imprisonment in technical violation center; certain restrictions on imposition of bail for persons required to register as sex offender.

JUDICIAL DECISIONS

1. In general; applicability.

Because mother was not placed on supervised or reporting probation, the five-year limitation in the statute did not apply; chancellor simply suspended her 30-day jail sentence on one narrow condition, that she comply with the court's order regarding father's visitation rights, which was a straight suspended sentence only not subject to the five-year limitation. Savell v. Manning, 325 So. 3d 1208, 2021 Miss. App. LEXIS 356 (Miss. Ct. App. 2021).

§ 47-7-37.1. Revocation of probation or post-release supervision.

JUDICIAL DECISIONS

ANALYSIS

1. Imposition of remainder of sentence.
2. Revocation.

1. Imposition of remainder of sentence.

Appellant's motion for post-conviction collateral relief was properly denied because the circuit court did not err in revoking his post-release supervision and imposing his suspended sentence based on its finding by a preponderance of the evidence that he committed the felony offenses of robbery and possession of methamphetamine. Amerson v. State, 2021 Miss. App. LEXIS 357 (Miss. Ct. App. Sept. 7, 2021).

Appellant's motion for post-conviction collateral relief was properly denied because his speedy trial right was not violated; there was no requirement that he be indicted and a trial held in order for appellant's post-release supervision to be revoked. Amerson v. State, 2021 Miss. App. LEXIS 357 (Miss. Ct. App. Sept. 7, 2021).

2. Revocation.

Appellant's post-release supervision

(PRS) was not unlawfully revoked because the five-year PRS period had yet to expire, he violated the terms of his PRS, and the period of PRS was revoked in a timely manner. Williams v. State, 329 So. 3d 582, 2021 Miss. App. LEXIS 450 (Miss. Ct. App. 2021).

§ 47-7-40. Earned-discharge program; eligibility; accrual of earned-discharge credits.

JUDICIAL DECISIONS

1. Receipt of credits.

Denial of appellant's motion for postconviction collateral relief (PCR) was proper because he was no longer receiving earned-discharge credits as of September 2016 and the November 30, 2016 order of modification had already revoked; thus, all earned-discharge credits, when the revocation order was entered on May 16, 2017, there were no earned-discharge credits to be addressed by the circuit court. Williams v. State, 329 So. 3d 582, 2021 Miss. App. LEXIS 450 (Miss. Ct. App. 2021).

TITLE 53.

OIL, GAS, AND OTHER MINERALS

CHAPTER 1.

STATE OIL AND GAS BOARD

IN GENERAL

§ 53-1-43. Suits to restrain violations or threatened violations; lien remedy.

JUDICIAL DECISIONS

1. In general.

Because the Mississippi State Oil and Gas Board was unable to provide an adequate remedy for property owners' personal-injury and property-damage claims relating to the alleged improper use of an oil-disposal well on an adjoining oil field property, the owners were not required to exhaust administrative remedies before proceeding on their common-law claims in the circuit court. Petro Harvester Oil & Gas Co., LLC v. Baucum, 2021 Miss. LEXIS 196 (Miss. Aug. 5, 2021).

TITLE 63.

MOTOR VEHICLES AND TRAFFIC REGULATIONS

Chapter 17. Manufacture, Sales and Distribution. 63-17-1
Chapter 21. Motor Vehicle Titles. 63-21-1

CHAPTER 3.

TRAFFIC REGULATIONS AND RULES OF THE ROAD

ARTICLE 25.

RECKLESS OR CARELESS DRIVING AND MISCELLANEOUS RULES.

§ 63-3-1201. Reckless driving.

JUDICIAL DECISIONS

3. Reckless driving under particular circumstances.

4. —Weaving.

Evidence was sufficient to support defendant's conviction of reckless driving because the officers testified that defendant was driving at an excessive rate of speed while weaving in and out of his lane, there were other drivers on the road, and the manner in which defendant was driving posed a danger to the other drivers. Johnson v. State, 326 So. 3d 1019, 2021 Miss. App. LEXIS 144 (Miss. Ct. App.), cert. denied, 326 So. 3d 466, 2021 Miss. LEXIS 299 (Miss. 2021).

CHAPTER 11.

IMPLIED CONSENT LAW

§ 63-11-30. Operating a vehicle while under influence of alcohol or other drugs; penalties; zero tolerance for minors; DUI test refusal; aggravated DUI; DUI child endangerment; expunction; nonadjudication.

JUDICIAL DECISIONS

9. Sufficiency of evidence.

State presented sufficient evidence to prove to the fact-finder beyond a reasonable doubt that defendant was driving under the influence of marijuana. A reasonable juror could have inferred from a trooper's testimony regarding defendant's poor balance as he walked to the rear of his vehicle and defendant's watery and bloodshot eyes that his driving ability was impaired. Briggs v. State, — So. 3d —, 2022 Miss. App. LEXIS 141 (Miss. Ct. App. May 3, 2022).

CHAPTER 17.

MANUFACTURE, SALES AND DISTRIBUTION

Motor Vehicle Warranty Enforcement Act. 63-17-151

MOTOR VEHICLE WARRANTY ENFORCEMENT ACT

Sec.
63-17-155. Definitions.

§ 63-17-155. Definitions.

As used in Sections 63-17-151 through 63-17-165, the following terms shall have the following meanings:

(a) "Collateral charges" means those additional charges to a consumer which are not directly attributable to the manufacturer's suggested retail price label for the motor vehicle. Collateral charges shall include, but not be limited to, dealer preparation charges, undercoating charges, transportation charges, towing charges, replacement car rental costs and title charges.

(b) "Comparable motor vehicle" means an identical or reasonably equivalent motor vehicle.

(c) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, primarily used for personal, family, or household purposes, and any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

(d) "Express warranty" means any written affirmation of fact or promise made in connection with the sale of a motor vehicle by a supplier to a consumer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time. For the purposes of Section 63-17-151 et seq., express warranties do not include implied warranties.

(e) "Manufacturer" means a manufacturer or distributor as defined in Section 63-17-55.

(f) "Motor vehicle" means a vehicle propelled by power other than muscular power which is sold in this state, is operated over the public streets and highways of this state and is used as a means of transporting persons or property, but shall not include vehicles run only upon tracks, off-road vehicles, motorcycles, mopeds, electric bicycles, electric personal assistive mobility devices as defined in Section 63-3-103, or golf carts or low speed vehicles as defined in Section 63-32-1, or parts and components of a motor home which were added on and/or assembled by the manufacturer of the motor home. "Motor vehicle" shall include demonstrators or lease-purchase vehicles as long as a manufacturer's warranty was issued as a condition of sale.

(g) "Purchase price" means the price which the consumer paid to the manufacturer to purchase the motor vehicle in a cash sale or, if the motor vehicle is purchased in a retail installment transaction, the cash sale price as defined in Section 63-19-3.

HISTORY: Laws, 1985, ch. 336, § 3; Laws, 2003, ch. 485, § 12, eff from and after July 1, 2003; Laws, 2021, ch. 367, § 6, eff from and after passage (approved March 17, 2021); Laws, 2021, ch. 355, § 9, eff from and after July 1, 2021.

Editor's Notes — This section is set out above to correct an error in the section as it appeared in the 2021 Volume 13A Cumulative Supplement.

CHAPTER 21.

MOTOR VEHICLE TITLES

Article 1. General Provisions. 63-21-1

ARTICLE 1.

GENERAL PROVISIONS.

Sec.
63-21-64. Fees paid to Department of Revenue for issuing and processing necessary documents.

§ 63-21-64. Fees paid to Department of Revenue for issuing and processing necessary documents.

There shall be paid to the Department of Revenue for issuing and processing documents required by this chapter, fees for manufactured homes or mobile homes according to the following schedule:

(a) Each application for certificate of title ..... $ 9.00

(b) Each application for replacement or corrected certificate of title 9.00

(c) Each suspension or revocation of certificate of title 9.00

(d) Each notice of security interest 9.00

(e) Each release of security interest 9.00

(f) Each assignment by lienholder 9.00

(g) Each application for information as to the status of the title of a manufactured home or mobile home 9.00

(h) Each application for retirement, destruction or severance of title pursuant to Section 30 ..... 9.00

The designated agent may add the sum of One Dollar ($1.00) to each document processed for which a fee is charged to be retained as his commission for services rendered. All other fees collected shall be remitted to the department.

If more than one (1) transaction is involved in any application on a single manufactured home or mobile home and if supported by all required documents, the fee charged by the department's designated agent for processing and issuing shall be considered as only one (1) transaction.

HISTORY: Laws, 1999, ch. 556, § 32; Laws, 2010, ch. 496, § 2, eff from and after July 1, 2010; Laws, 2018, ch. 401, § 11, eff from and after January 1, 2019.

Editor's Notes — This section is set out above to correct an error in the section as it appeared in the 2021 Volume 13A Cumulative Supplement.

TITLE 71.

LABOR AND INDUSTRY

Chapter 3. Workers' Compensation. 71-3-1

CHAPTER 3.

WORKERS' COMPENSATION

General Provisions. 71-3-1

GENERAL PROVISIONS

Sec.
71-3-63. Fees for legal and other services.

§ 71-3-3. Definitions.

JUDICIAL DECISIONS

17. Disability.

Workers' Compensation Commission did not err in denying the worker permanent disability benefits because the Commission properly applied the rebuttable presumption that the worker suffered no loss of wage-earning capacity, as her post-injury wages were higher than her pre-injury wages, and substantial evidence supported the Commission's finding that the worker failed to rebut that presumption. McKenzie v. Howard Indus., 323 So. 3d 520, 2020 Miss. App. LEXIS 35 (Miss. Ct. App.), cert. denied, 302 So. 3d 643, 2020 Miss. LEXIS 384 (Miss. 2020).

§ 71-3-7. Liability for payment of compensation.

JUDICIAL DECISIONS

49. Wage-earning potential.

Workers' Compensation Commission did not err in denying the worker permanent disability benefits because the Commission properly applied the rebuttable presumption that the worker suffered no loss of wage-earning capacity, as her post-injury wages were higher than her pre-injury wages, and substantial evidence supported the Commission's finding that the worker failed to rebut that presumption. McKenzie v. Howard Indus., 323 So. 3d 520, 2020 Miss. App. LEXIS 35 (Miss. Ct. App.), cert. denied, 302 So. 3d 643, 2020 Miss. LEXIS 384 (Miss. 2020).

§ 71-3-9. Exclusiveness of liability.

JUDICIAL DECISIONS

8. Negligent infliction of emotional distress.

Circuit court properly dismissed the negligence claims (negligence, negligent infliction of emotional distress, gross negligence, and negligent supervision) because the claims were barred by the exclusivity provisions of the Mississippi Workers' Compensation Act. Spiers v. Oak Grove Credit, LLC, 328 So. 3d 645, 2021 Miss. LEXIS 325 (Miss. 2021).

§ 71-3-29. Compromise, commutation, and lump sum payments.

JUDICIAL DECISIONS

1. In general.

Circuit court had jurisdiction to hear appellant's bad-faith claim against appellees and the circuit court erred by dismissing the complaint, as appellant exhausted his administrative remedies because he fully and finally settled his workers' compensation claim against appellees, the Mississippi Workers' Compensation Commission approved the settlement, and there was nothing left pending before the Commission. Thornhill v. Walker-Hill Envtl., — So. 3d —, 2021 Miss. App. LEXIS 429 (Miss. Ct. App. Oct. 19, 2021).

§ 71-3-63. Fees for legal and other services.

(1) No claim for legal services or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid unless approved by the commission or, if proceedings for review of the order of the commission in respect of such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the commission or such court, be a lien upon such compensation.

(2) Any person (a) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the commission or such court, or (b) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

(3) Representation of one other than himself or herself before the commission shall be considered the practice of law, and all statutes applying to and regulating the practice in all other courts of law in this state shall likewise apply to practice before the commission, insofar as the qualifications of those practicing before the commission are concerned. This paragraph shall not be construed as tightening the rules of evidence which are otherwise relaxed in other sections of this chapter.

In no instance shall the amount recovered by an attorney for an appearance before the commission exceed twenty-five percent (25%) of the total award

of compensation. Such limitations, however, shall not be construed as applying to a fee awarded for additional services by any superior court. Legal services rendered where no motion to controvert has been filed by either employer or employee shall be considered as consultation, and that factor shall be taken into consideration in awarding a fee. Attorneys may not recover attorney's fees based upon benefits voluntarily paid to an injured employee for temporary or permanent disability. Any settlement negotiated by an attorney shall not be considered a voluntary payment. In all instances, fees shall be awarded on the basis of fairness to both attorney and client. Although exceptions may be made in the interest of justice, it shall be deemed conducive to the best interest of all concerned for the commission to approve contracts for attorney's fees voluntarily entered into between attorney and client, within the limitations hereinabove set out.

When an award of compensation becomes final and an attorney's fee is outstanding, a partial lump-sum settlement sufficient to cover the attorney's fee approved therein by the commission shall be made immediately, from payments last to become due, and the deductions allowed by the law shall be borne equally by the attorney and the client.

HISTORY: Codes, 1942, § 6998-32; Laws, 1948, ch. 354, § 26; Laws, 1950, ch. 412, § 12; reenacted without change, Laws, 1982, ch. 473, § 32; reenacted without change, Laws, 1990, ch. 405, § 33; Laws, 2012, ch. 522, § 7, eff from and after July 1, 2012.

Editor's Notes — This section is set out above to correct an error in subsection (3) as it appeared in the 2021 Replacement Volume 15.

§ 71-3-75. Security for payment of compensation.

JUDICIAL DECISIONS

3. Self-insurer.

In this Mississippi Workers' Compensation Act action, the dismissal of both workers' compensation claims was affirmed because when the employee died and her estate sought no benefits, the issue was rendered moot as to the employee's claims, and the Mississippi Workers' Compensation Commission had no reason to consider the issue because it could not affect the employee's rights in any way. Miss. Dep't of Econ. & Cmty. Dev. v. Gen. Reinsurance Corp., — So. 3d —, 2021 Miss. App. LEXIS 490 (Miss. Ct. App. Nov. 23, 2021).

CHAPTER 5.
UNEMPLOYMENT COMPENSATION

ARTICLE 1.
GENERAL PROVISIONS.

§ 71-5-11. Definitions [Repealed effective July 1, 2023].

JUDICIAL DECISIONS

2. Determination of employment status.

Decision of the Mississippi Department of Employment Security Board of Review that an employer-employee relationship existed between a company and a worker was not supported by substantial evidence because his employment status constituted that of an independent contractor; the worker was not supervised, he was not required to work certain hours or to accept a certain number of customers, and the company did not pay him a salary or hourly fee, but he was compensated through his customers. Gulf Coast Transit Servs., LLC v. Miss. Dep't of Emp. Sec., 333 So. 3d 110, 2022 Miss. App. LEXIS 10 (Miss. Ct. App. 2022).

ARTICLE 11.
BENEFITS.

§ 71-5-517. Initial determination [Repealed effective July 1, 2023].

JUDICIAL DECISIONS

2. Late notice of appeal.

3. —Failure to show good cause.

Where appellant was discharged by his employer for "misconduct and the Mississippi Department of Employment Security denied his claim, his appeal was properly dismissed as untimely under Miss. Code Ann. § 71-5-517 as he did not show "good cause" for failing to appeal within the statutory time limit. Because appellant acknowledged that he received the notice of the denial of his claim but left the job center without filing his notice of appeal and then waited approximately thirty-eight days before filing the appeal, there was substantial evidence to support the ALJ's decision to dismiss his appeal. Grace v. Miss. Dep't of Empl. Sec., 328 So. 3d 1267, 2021 Miss. App. LEXIS 421 (Miss. Ct. App. 2021).

TITLE 73.

PROFESSIONS AND VOCATIONS

Chapter 17. Nursing Home Administrators. 73-17-1
Chapter 19. Optometry and Optometrists. 73-19-1

CHAPTER 17.

NURSING HOME ADMINISTRATORS

Sec.
73-17-11. Licensing of administrators; qualifications; examination; reciprocity; fees [Repealed effective July 1, 2021].

§ 73-17-11. Licensing of administrators; qualifications; examination; reciprocity; fees [Repealed effective July 1, 2021].

(1) From and after July 1, 2011, in order to be eligible to be licensed as a nursing home administrator, an individual must submit evidence satisfactory to the board that he or she:

(a) Is at least twenty-one (21) years of age;

(b) Is of good moral character, including evidence of a criminal background check within the last six (6) months, under Section 43-11-13 and Section G.407.3 of the Minimum Standards for Institutions for the Aged or Infirm;

(c) Is in good health;

(d) Has satisfied at least one (1) of the following requirements for education and experience:

(i) Has sixty-four (64) hours of college work from an accredited institution and has worked in a supervisory capacity in a Mississippi-licensed nursing home for a minimum of two (2) years immediately before making application for the Administrator-in-Training Program established by board rule;

(ii) Has an associate degree from an accredited institution and has worked in a supervisory capacity in a Mississippi-licensed nursing home for a minimum of two (2) years immediately before making application for the Administrator-in-Training Program established by board rule;

(iii) Has a bachelor's degree in any other field of study from an accredited institution before making application for the Administrator-in-Training Program established by board rule; or

(iv) Has a bachelor's degree in health care administration or a health care related field or business from an accredited institution before making application for the Administrator-in-Training Program established by board rule;

(e) Has (i) completed a nursing home Administrator-in-Training Program and successfully completed the National Association of Long-Term

Care Administrator Board (NAB) examination, or (ii) completed an Administrator-in-Training Program in Long-Term Care Administration from an academic institution during which time the institution held National Association of Long-Term Care Administrator Board (NAB) Program Approval through the academic approval process, to the satisfaction of the board;

(f) Has successfully passed the National Association of Long-Term Care Administrator Board (NAB) examination and the Mississippi State Board of Nursing Home Administrators examination to test his or her proficiency and basic knowledge in the area of nursing home administration. The board may establish the frequency of the offering of those examinations and the contents thereof; and

(g) Has met all of the requirements established by federal law.

(2) The board is authorized to conduct a criminal history records check on applicants for licensure. In order to determine the applicant's suitability for licensing, the applicant shall be fingerprinted. The board shall submit the fingerprints to the Department of Public Safety for a check of the state criminal records and forward to the Federal Bureau of Investigation for a check of the national criminal records. The Department of Public Safety shall disseminate the results of the state check and the national check to the board for a suitability determination. The applicant shall not be charged any of the costs of requesting and obtaining the state and national criminal history records information on the applicant.

(3) Reciprocity shall be extended to individuals holding licenses as nursing home administrators in other states, upon proper application and a finding on the part of the board that:

(a) The applicant possesses the basic qualifications listed in this chapter and in the rules and regulations adopted under federal law;

(b) The applicant has met all of the requirements established by federal law; and

(c) The standards for licensure in the other states are at least the substantial equivalent of those in this state, including education and experience, and the applicant has passed both the National Association of Long-Term Care Administrator Board (NAB) and the state exams.

The issuance of a license by reciprocity to a military-trained applicant, military spouse or person who establishes residence in this state shall be subject to the provisions of Section 73-50-1 or 73-50-2, as applicable.

(4) The board may prescribe appropriate fees for the taking of those examinations and for the issuance of licenses. Those fees shall be not more than the cost of the examinations and Five Hundred Fifty Dollars ($550.00) for the issuance of a license. However, the fee for an initial license may be prorated in proportion to the period of time from the date of issuance and the date of biennial license renewal prescribed in subsection (5). All licenses issued under this chapter shall be for a maximum period of two (2) years.

(5) Except as provided in Section 33-1-39, the board may renew licenses biennially upon the payment of a fee to be established by the board, which shall be not more than Five Hundred Fifty Dollars ($550.00), plus any administrative costs for late payment.

(6) Any person who is not licensed under this chapter on July 1, 2011, who makes application with the board on or before June 30, 2012, may qualify for a license under this chapter provided that on or before January 31, 2014, he or she demonstrates to the satisfaction of the board that he or she (a) meets the eligibility requirements for a nursing home administrator's license prescribed in this section as those requirements existed on June 30, 2011; (b) has successfully completed the Administrator-in-Training Program requirements existing on June 30, 2011; and (c) has paid all required fees for licensure.

(7) Current licensure by the Department of Mental Health under Section 41-4-7(r) as a mental health/intellectual disability program administrator shall exempt the licensee from the requirement of licensure as a nursing home administrator if the licensee is employed in the state mental health system as Administrator of Intermediate Care Facility or Facilities for Persons with Intellectual Disabilities (ICF/ID) no larger than sixteen (16) beds.

(8) Any member of the Legislature who serves on the Public Health and/or Medicaid Committee who is a licensed nursing home administrator shall be exempt from continuing education requirements for license renewal.

HISTORY: Codes, 1942, § 8831-106; Laws, 1970, ch. 414, § 6; reenacted and amended, Laws, 1983, ch. 390, § 6; Laws, 1984, ch. 361; Laws, 1988, ch. 424; reenacted, Laws, 1991, ch. 466, § 6; Laws, 1996, ch. 458, § 1; Laws, 1997, ch. 588, § 44; Laws, 2002, ch. 578, § 1; Laws, 2007, ch. 309, § 15; Laws, 2011, ch. 542, § 1; Laws, 2012, ch. 367, § 1; Laws, 2013, ch. 350, § 19; Laws, 2015, ch. 435, § 1, eff from and after July 1, 2015; Laws, 2018, ch. 338, § 1, eff from and after July 1, 2021; Laws, 2021, ch. 468, § 1, eff from and after passage (became law without the Governor's signature on April 17, 2021).; Laws, 2021, ch. 398, § 16, eff from and after July 1, 2021.

Editor's Notes — This section is set out above to correct an error in subsection (4) as it appeared in the 2021 Volume 15A Cumulative Supplement.

CHAPTER 19.

OPTOMETRY AND OPTOMETRISTS

Authorized Ophthalmic YAG Laser Posterior Capsulotomy Procedure. ... 73-19-191

AUTHORIZED OPHTHALMIC YAG LASER POSTERIOR CAPSULOTOMY PROCEDURE

Sec.
73-19-191. Qualifications for license to perform authorized ophthalmic YAG laser posterior capsulotomy procedures.

§ 73-19-191. Qualifications for license to perform authorized ophthalmic YAG laser posterior capsulotomy procedures.

An optometrist may be licensed in Mississippi to perform authorized ophthalmic YAG laser posterior capsulotomy procedures if he/she:

(a) Provides proof of holding a Mississippi license to practice therapeutic optometry and is in good standing;

(b) Provides proof of satisfactory completion of a course of instruction as approved by the board. Those graduating from an accredited school or college of optometry within five (5) years after July 1, 2021, may be excluded from course completion requirement, provided that the candidate has successfully passed appropriate coursework to fulfill requirements as determined by the board. The board-approved course of instruction shall be:

(i) Provided by an accredited optometry, osteopathy or medical school;

(ii) A minimum of thirty-two (32) clock hours in length; and

(iii) Sponsored by an organization approved by the board;

(c) Satisfactorily completes a written test approved by the board on aspects pertaining to authorized ophthalmic YAG laser posterior capsulotomy procedures;

(d) Passes a clinical skills assessment approved by the board;

(e) Participates in eight (8) additional hours of working under a preceptor who is either an ophthalmologist or licensed credentialed optometrist. The preceptor must be licensed to perform the ophthalmic YAG laser posterior capsulotomy procedures, and the training shall occur within the state in which the preceptor is licensed to perform such procedures; and

(f) Such other requirements as may be directed by the board.

HISTORY: Laws, 2021, ch. 316, § 4, eff from and after July 1, 2021.

Editor's Notes —This section is set out above to correct an error in (b) as it appeared in the 2021 Volume 15A Cumulative Supplement.

TITLE 77.
PUBLIC UTILITIES AND CARRIERS

CHAPTER 5.
ELECTRIC POWER

ARTICLE 5.
ELECTRIC POWER ASSOCIATIONS.

§ 77-5-235. Rates; limitations on disconnections; attaching entities.

JUDICIAL DECISIONS

2. Return of excess revenues and receipts.

Chancery court properly granted an electric power association's motion to compel arbitration in the members' action for failure to return excess revenues and receipts because the parties entered into a valid arbitration agreement, the association's board of directors was statutorily authorized to adopt and amend the bylaws, the members agreed to be bound by the bylaws and knew that they could be amended, their dispute fell within the scope of the agreement, and no external factors precluded arbitration, and there was no evidence that the arbitration provision was a contract of adhesion or was procedurally unconscionable. Virgil v. Sw. Miss. Elec. Power Ass'n, 296 So. 3d 53, 2020 Miss. LEXIS 87 (Miss. 2020).

TITLE 79.

CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

CHAPTER 4.

MISSISSIPPI BUSINESS CORPORATION ACT

ARTICLE 7.

SHAREHOLDERS.

SUBARTICLE A.

MEETINGS.

§ 79-4-7.04. Action without meeting.

JUDICIAL DECISIONS

1. Agreement enforceable.

It was error to deny a law firm's motion to dismiss an attorney's breach of contract action for failure to state a claim because the firm exercised rights found in an operating agreement, which unambiguously read that action could be taken in the absence of a meeting; a person with the attorney training, expertise, and reputation and cognizant of the customs, practices, usages, and terminology of limited-liability companies would know that "actions without meeting" provisions were commonplace. Watkins & Eager, PLLC v. Lawrence, 326 So. 3d 988, 2021 Miss. LEXIS 276 (Miss. 2021).

ARTICLE 8.

DIRECTORS AND OFFICERS.

SUBARTICLE A.

BOARD OF DIRECTORS.

§ 79-4-8.09. Removal of directors by judicial proceeding.

JUDICIAL DECISIONS

1. Removal denied.

Based on the "may" language of subsection (a), it was a discretionary call for the chancellor to not remove a director because it was clear the the chancellor intended co-management of a corporation, as opposed to sole management by either the director or a shareholder; while the shareholder asked for sole decision-making authority, there was no abuse of discretion in the chancellor's determination that neither owner could be allowed exclu-

sive control. Boatright v. A & H Techs., Inc., 296 So. 3d 687, 2020 Miss. LEXIS 243 (Miss. 2020).

ARTICLE 14.

DISSOLUTION.

SUBARTICLE B.

ADMINISTRATIVE DISSOLUTION.

§ 79-4-14.22. Reinstatement following administrative dissolution.

JUDICIAL DECISIONS

2. Capacity to bring action.

Circuit court did not err in holding that a patent holder had standing under Miss. Code Ann. § 79-4-14.22(1) to sue a trade association for unjust enrichment because the patent holder had been successfully reinstated as an active corporation by the Mississippi Secretary of State by the time it filed its amended complaint. Int'l Ass'n of Certified Home Inspectors v. Homesafe Inspection, Inc., 335 So. 3d 583, 2022 Miss. App. LEXIS 74 (Miss. Ct. App. 2022).

CHAPTER 29.

REVISED MISSISSIPPI LIMITED LIABILITY COMPANY ACT

ARTICLE 1.

GENERAL PROVISIONS.

§ 79-29-105. Definitions.

JUDICIAL DECISIONS

1. Member.

Creditor was a member of the limited liability company (LLC) he created with the debtor because the LLC's operating agreement was implied in the parties' understanding, shared from the beginning, that they would create the business, that the creditor would put up the money, and that he would be repaid from the profits. Lou v. Ochello (In re Ochello), — B.R. —, 2022 Bankr. LEXIS 829 (Bankr. S.D. Miss. Mar. 30, 2022).

§ 79-29-123. General standards of conduct and construction and application of certificate of formation and operating agreement; scope, function, and limitations.

JUDICIAL DECISIONS

1. Member.

Creditor was a member of the limited liability company (LLC) he created with the debtor because the LLC's operating agreement was implied in the parties' understanding, shared from the beginning, that they would create the business, that the creditor would put up the money, and that he would be repaid from the profits. Lou v. Ochello (In re Ochello), — B.R. —, 2022 Bankr. LEXIS 829 (Bankr. S.D. Miss. Mar. 30, 2022).

ARTICLE 3.

MEMBERS.

§ 79-29-311. Liability to third parties.

JUDICIAL DECISIONS

1. Personal liability.

While under the statute, no member was obligated for a debt solely by reason of being a member, members could be liable for their own individual tortious actions, including fraud, and the homeowners' specific pleadings concerning fraud, including that the members represented that the entire house had been renovated and was covered by warranties, clearly met the requirements of the pleading rule. Lancaster v. Miller, 319 So. 3d 1174, 2021 Miss. App. LEXIS 77 (Miss. Ct. App. 2021).

ARTICLE 9.

PROFESSIONAL LIMITED LIABILITY COMPANIES.

§ 79-29-920. Responsibility for professional services.

JUDICIAL DECISIONS

1. Attorney liability.

In a legal malpractice case against a law firm organized as a PLLC, the trial court erred by granting partial summary judgment against an attorney because he could not be held individually liable under Miss. Code Ann. § 79-29-920(1) as he was not the managing attorney at the time the firm failed to file plaintiff's workers' compensation claim within the statute of limitations. Lairy v. Chandler, — So. 3d —, 2021 Miss. App. LEXIS 417 (Miss. Ct. App. Oct. 5, 2021).

TITLE 83.

INSURANCE

CHAPTER 9.

ACCIDENT, HEALTH AND MEDICARE SUPPLEMENT INSURANCE

ACCIDENT AND HEALTH INSURANCE

§ 83-39-27. Prohibited activities.

JUDICIAL DECISIONS

1. Exceeded scope of authority.

Defendants exceeded the scope of their authority of bail bondsmen and had no lawful authority to kidnap the victim for nonpayment of the bond because, once the victim informed them that he could not provide any payment, defendants ordered him to obtain illegal drugs, after he was unsuccessful they handcuffed him and put him in the trunk of the vehicle and held him against his will, rather than taking him back to jail. Magee v. State, — So. 3d —, 2022 Miss. App. LEXIS 108 (Miss. Ct.)

TITLE 85.

DEBTOR-CREDITOR RELATIONSHIP

CHAPTER 3.

EXEMPT PROPERTY

§ 85-3-1. Property exempt from seizure under execution or attachment.

JUDICIAL DECISIONS

2. Exempt personal property generally.

Secured creditor's lien was avoidable only as to personal property that was both exempt under Mississippi statute and "household good" as defined under § 522(f)(4) of Bankruptcy Code. One television, three Apple tablets, laptop computer, and desktop computer met both requirements, so creditor's lien could be avoided as to those items, and while two other televisions, woodworking lathe, and collection of model cars were exempt under Mississippi's statute, they were not "household goods" under § 522(f)(4), so creditor's lien could not be avoided as to them. In re Farris, — B.R. —, 2022 Bankr. LEXIS 840 (Bankr. S.D. Miss. Mar. 30, 2022).

CHAPTER 7.

LIENS

ARTICLE 5.

MECHANICS AND STABLEKEEPERS.

§ 85-7-105. Remedy where lienholder loses possession to owner.

JUDICIAL DECISIONS

4. Validity of lien.

In an action stemming from a dispute over construction liens, the trial court erred by denying the property owner's motions for summary judgment because it was clear that the subcontractor's construction liens were not good liens because the subcontractor failed to file its lis pendens notice with the commencement of the action. KD Oak Grove, LLC v. Warren & Warren Asphalt Paving, LLC, 324 So. 3d 1134, 2021 Miss. LEXIS 257 (Miss. 2021).

ARTICLE 21.

SPECIAL LIENS ON REAL ESTATE OR OTHER PROPERTY.

§ 85-7-429. Liability for falsely and knowingly filing claim of lien without just cause.

JUDICIAL DECISIONS

1. Findings.

Circuit court erred in expunging a notice of construction lien filed by a contractor and its owner because, despite the plain language of the applicable statute, the circuit court failed to make any findings as to the validity of the notice of the construction lien prior to expunging it. ABG Contrs. Inc. v. I-55 Dev. LLC, 302 So. 3d 691, 2020 Miss. App. LEXIS 465 (Miss. Ct. App. 2020).

TITLE 89.

REAL AND PERSONAL PROPERTY

CHAPTER 1.

LAND AND CONVEYANCES

IN GENERAL

§ 89-1-29. Spouse's role in conveying homestead; incompetent spouse; limited power of attorney in conveyance of homestead.

JUDICIAL DECISIONS

4. Validity of conveyances in general.

Since a property owner's wife did not join in a third-party conveyance to their daughter, that conveyance was void, and the chancery court did not err by granting an LLC's motion for summary judgment; a 2015 Deed of Trust was valid because the owner had full ownership of the subject property at the time, and the LLC had the right to foreclose on the property. Kelly v. Ocwen Loan Servicing LLC, 329 So. 3d 439, 2021 Miss. LEXIS 355 (Miss. 2021).

CHAPTER 8.

RESIDENTIAL LANDLORD AND TENANT ACT

§ 89-8-19. Length of term of tenancy; notice to terminate tenancy; exception to notice requirement.

JUDICIAL DECISIONS

1. Procedure.

Circuit court did not err in granting appellee's motion for summary judgment. Appellant's claims that appellee's husband failed to comply with certain statutes regarding termination of a month-to-month tenancy were never brought before the circuit court and were procedurally barred from consideration on appeal. Hunt v. Allen, 291 So. 3d 1125, 2020 Miss. App. LEXIS 60 (Miss. Ct. App. 2020).

TITLE 91.

TRUSTS AND ESTATES

CHAPTER 1.

DESCENT AND DISTRIBUTION

§ 91-1-23. Exempt property not to be partitioned in certain cases.

JUDICIAL DECISIONS

7. "Partition."

Chancery court properly denied the complaint for partition by sale as to the residential property because the marital residence had been claimed as homestead property during the marriage and continued to be claimed as homestead property by the husband, who still resided at the residence. Therefore, the involuntary partition of such property by chancery decree was prohibited by statute, since it could only have been partitioned by written agreement of the parties. Land v. Land, 334 So. 3d 1245, 2022 Miss. App. LEXIS 86 (Miss. Ct. App. 2022).

CHAPTER 7.

EXECUTORS AND ADMINISTRATORS

GENERAL PROVISIONS

§ 91-7-7. Proof of due execution of will.

JUDICIAL DECISIONS

3. Proof of handwriting.

Record reflected that the grandson proved the handwriting of the testator and one of the subscribing witnesses but failed to prove the handwriting of the second subscribing witness, when neither subscribing witness was still alive to testify. Because the grandson failed to prove the handwriting of at least two subscribing witnesses, the chancellor did not err by dismissing the grandson's petition to probate the purported will. Christmas v. Christmas (In re Will of Beard), 334 So. 3d 1154, 2022 Miss. LEXIS 80 (Miss. 2022).

§ 91-7-23. Validity contested within two years.

JUDICIAL DECISIONS

4. Concealed fraud.

Although appellant claimed that the executor's actions constituted concealed fraud, because the will was admitted to probate in common form, and appellant was not a party, the only duties of the executor were to notify the parties named in the will and give 90 day notice to creditors, both of which were done; thus, the rule of concealed fraud did not apply.

Peyton v. Longo (In re Estate of Davis), 315 So. 3d 1080, 2021 Miss. App. LEXIS 157 (Miss. Ct. App. 2021).

CHAPTER 8.

MISSISSIPPI UNIFORM TRUST CODE

ARTICLE 10.

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE.

§ 91-8-1004. Attorney's fees and costs.

JUDICIAL DECISIONS

1. Award reversed.

While a mistake had been made with the drafting of the trust instrument, the award of attorneys' fees was reversed as no findings were made that the attorneys' fees were reasonable or that justice and equity required that the fees be paid from the trust. Olin v. Richards (In re Estate of Blackburn), 299 So. 3d 781, 2020 Miss. LEXIS 337 (Miss. 2020).

TITLE 93.

DOMESTIC RELATIONS

CHAPTER 5.

DIVORCE AND ALIMONY

§ 93-5-1. Causes for divorce.

JUDICIAL DECISIONS

ANALYSIS

10. Cruel and inhuman treatment.
18. —Evidence.

10. Cruel and inhuman treatment.

Because wife filed for divorce on the ground of habitual cruel and inhuman treatment after the effective date of the amendment, the amended language of the statute applied to her complaint, plus the parties participated in discovery regarding wife's allegations of spousal domestic abuse; her last-minute motion to amend the complaint to track the language of the amended section was futile and the chancellor did not err by denying the motion. Wangler v. Wangler, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

17. —Evidence.

Although wife claimed that husband deprived her of sleep, she offered no testimony to suggested that his alleged criticism was the ultimate cause of her sleep deprivation, plus she acknowledged that she was already losing sleep with their young child and she worked 12-hour shifts as a nurse in the emergency room; wife failed to prove cruel and inhuman treatment. Wangler v. Wangler, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

Record showed that despite husband's alleged criticism of wife and her forced isolation, she communicated regularly with her family and friends; thus, wife failed to prove cruel and inhuman treatment. Wangler v. Wangler, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

False accusations by husband of wife's infidelity, made only a handful of times over a short period of time, did not amount to habitual cruel and inhuman treatment. Wangler v. Wangler, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

Wife's claim that husband abandoned her on multiple occasions was contradicted by the evidence; in part, there was no indication that husband refused to pick her up or intentionally left her stranded at work, and wife failed to show habitual cruel and inhuman treatment. Wangler v. Wangler, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

Despite wife's allegations of spousal domestic abuse, she clearly planned to move with husband to North Carolina, and it was not until the day they were packing up their apartment to move that she decided not to go, plus the record showed that she posted various message on social media expressing her love and admiration for husband both before and during their marriage; she failed to prove habitual cruel and inhuman treatment. Wangler v. Wangler, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

Despite wife's allegations that husband was critical and controlling, criticism and controlling behavior did not fulfill the requirements of a divorce on the grounds of habitual cruel and inhuman treatment, and while odd and even disrespectful at times, husband's behavior did not amount to such; the parties' immaturity, lack of communication, frivolous quarreling, and incompatibility did not amount to cruel and inhuman treatment. Wangler v. Wangler, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

§ 93-5-23. Custody of children; alimony; effect of military duty on custody and visitation.

JUDICIAL DECISIONS

ANALYSIS

II. CUSTODY.

17. In general.
18. Factors in determining award of custody.
21. Practice and procedure.

VII. OTHER MATTERS.

62. Review.

II. CUSTODY.

17. In general.

Trial court properly awarded a mother paramount physical custody of the parties' child subject to the visitation rights of the father, because, as there were no accusations of abuse or neglect mandating the appointment of a guardian ad litem (GAL), and the GAL's failure to submit a written report to the chancery court did not constitute reversible error. Gibson v. Gibson, 333 So. 3d 103, 2022 Miss. App. LEXIS 2 (Miss. Ct. App. 2022).

18. Factors in determining award of custody.

Chancery court properly awarded the parties joint legal custody of their two minor children, awarded the mother physical custody, awarded the father visitation, and ordered him to pay child support because the chancellor discussed each of the Albright factors, there was insufficient and unsubstantiated evidence of sexual abuse of the minor while he was in the mother's care, and the court was not statutorily required to appoint a guardian ad litem based merely on an unsubstantiated assertion found in the pleadings of one of the parties. Embrey v. Young, — So. 3d —, 2021 Miss. App. LEXIS 499 (Miss. Ct. App. Nov. 30, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 114 (Miss. 2022).

21. Practice and procedure.

Chancellor did not abuse his discretion by not appointing a guardian ad litem (GAL); mother's written request for a GAL did not include any specifics or even an express allegation of abuse or neglect, nothing indicated that she presented any specifics to the chancellor prior to trial, and by the time of trial, her allegations had been investigated and deemed unsubstantiated. Savell v. Manning, 325 So. 3d 1208, 2021 Miss. App. LEXIS 356 (Miss. Ct. App. 2021).

VII. OTHER MATTERS.

62. Review.

Because a child had reached the age of majority, a father's issues raised on appeal regarding modification of child custody were moot; because the issue of whether there was any material change in circumstances affecting the child's custody was moot, the issue of whether the court should have applied the Albright factors was also moot. Wise v. Broome, — So. 3d —, 2022 Miss. App. LEXIS 27 (Miss. Ct. App. Jan. 25, 2022).

§ 93-5-24. Types of custody awarded by court; joint custody; no presumption in favor of maternal custody; access to information pertaining to child by noncustodial parent; restrictions on custody by parent with history of perpetrating family violence; rebuttable presumption that such custody is not in the best interest of the child; factors in reaching determinations; visitation orders.

JUDICIAL DECISIONS

13. Modification proper.

Chancellor's modification of the joint physical and legal custody custody of the parties' minor children to award sole physical custody to the mother, rather than to the father, was appropriate because the record supported the chancellor's finding that the parents' inability to co-parent was substantial enough to constitute a material change in circumstances that adversely affected the children such that the children were placed in counseling. Schmidt v. Schmidt, — So. 3d —, 2022 Miss. App. LEXIS 148 (Miss. Ct. App. May 10, 2022).

CHAPTER 11.

ENFORCEMENT OF SUPPORT OF DEPENDENTS

IN GENERAL

§ 93-11-65. Custody and support of minor children; additional remedies; determination of emancipation; temporary support awarded pending determination of parentage; effect of military duty on custody and visitation.

JUDICIAL DECISIONS

ANALYSIS

I. CUSTODY OF CHILDREN.

2. Factors in determining custody—extramarital conduct.

4. —Choice of child.

II. SUPPORT OF CHILDREN.

22. Emancipation.

I. CUSTODY OF CHILDREN.

2. Factors in determining custody—extramarital conduct.

4. —Choice of child.

Chancery court precisely followed the requirements of this section, as it allowed

the parties 15-year-old son to express his preference, acknowledged that the son preferred to live with his father, and then clearly articulated the reasons that it nevertheless did not find that the son's preference favored the father because of the father's drinking and permitting the son to drive a vehicle as an unlicensed and underage driver. Garrison v. Courtney, 304 So. 3d 1129, 2020 Miss. App. LEXIS 561 (Miss. Ct. App. 2020).

II. SUPPORT OF CHILDREN.

22. Emancipation.

Because a child had reached the age of majority, a father's issues raised on appeal regarding modification of child custody were moot; because the issue of whether there was any material change in circumstances affecting the child's custody was moot, the issue of whether the court should have applied the Albright factors was also moot. Wise v. Broome, — So. 3d —, 2022 Miss. App. LEXIS 27 (Miss. Ct. App. Jan. 25, 2022).

CHAPTER 15.

MISSISSIPPI TERMINATION OF PARENTAL RIGHTS LAW

§ 93-15-113. Conduct of hearing for involuntary termination of parental rights; counsel for parent.

JUDICIAL DECISIONS

3. Substantial compliance.

Youth court substantially complied with the requirements set forth in subsection (2) because although it did not address all the rights set forth in the subsection at the beginning of the hearing to terminate parental rights, the youth court did address the mother's right to an attorney and right to appeal at the onset of the hearing when it considered her motion for a continuance; the mother failed to show with any specificity what prejudice occurred due to the timing of the explanation. M.A.S. v. Lamar County Dep't of Child Prot. Servs., — So. 3d —, 2021 Miss. App. LEXIS 385 (Miss. Ct. App. Sept. 21, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 84 (Miss. 2022).

§ 93-15-121. Grounds for termination.

JUDICIAL DECISIONS

I. Under Current Law.

ANALYSIS

1. Termination proper.
2. Conviction for child exploitation.

1. Termination proper.

Youth court did not err by finding clear and convincing evidence that a mother's rights had to be terminated due to habitual alcoholism and other drug addiction because according to the testimony of both a family protection worker and the guardian ad litem (GAL), the mother was given multiple opportunities to prove her sobriety to the youth court and comply with the service agreement and failed to do so; both the worker and GAL testified about the mother's long history with drug abuse. M.A.S. v. Lamar County Dep't of Child Prot. Servs., — So. 3d —, 2021 Miss. App. LEXIS 385 (Miss. Ct. App. Sept. 21, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 84 (Miss. 2022).

Mother and her spouse, who wished to adopt the child, proved that termination of the father's parental rights was proper as the father failed to exercise reasonable visitation or communication with the child because the father last saw the child in July 2015 for a supervised visit; he had not attempted to communicate with the child since that visit; and, when asked what kind of relationship he had with the child, the father responded that the child was not in his life. In re M.R.H., 312 So. 3d 385, 2020 Miss. App. LEXIS 556 (Miss. Ct. App. 2020).

2. Conviction for child exploitation.

In a termination of parental rights case, the trial court did not err in finding that the father was convicted of child exploitation as it was inconsequential whether he committed that crime with a person under the age of 18 or an officer posing as a person under the age of 18 as either could result in a conviction for child exploitation; and his intent was present. In re M.R.H., 312 So. 3d 385, 2020 Miss. App. LEXIS 556 (Miss. Ct. App. 2020).

CHAPTER 16.

GRANDPARENTS' VISITATION RIGHTS

§ 93-16-3. Who may petition for visitation rights; when; court in which to file petition.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
5. Viable relationsihp.

1. In general.

Chancellor did not err in denying a grandfather statutory grandparent-visitation rights because the grandfather failed to prove the parents unreasonably denied him visitation with his granddaughters, and, therefore, the chancellor was not required to consider the best interest factors before concluding the grandfather was not entitled to grandparent visitation. Sims v. Sims, 2021 Miss. App. LEXIS 342 (Miss. Ct. App. Aug. 24, 2021).

Because the court of appeals found no error in the chancellor's determination that a grandfather failed to establish a "viable relationship" with his grandchildren, and the chancellor did not err in determining that the parents did not unreasonably withhold grandparent visitation, there was no error in the chancellor's determination that she was not required to consider the best interests of the children. Sims v. Sims, 2021 Miss. App. LEXIS 342 (Miss. Ct. App. Aug. 24, 2021).

5. Viable relationsihp.

Chancellor did not err in denying a grandfather statutory grandparent-visitation rights because the grandfather failed as a matter of law to meet the first statutory requirement, the existence of a "viable relationship" with respect to his granddaughters; the chancellor was not required to undertake a children's-best-interests analysis under the circumstances. Sims v. Sims, 2021 Miss. App. LEXIS 342 (Miss. Ct. App. Aug. 24, 2021).

CHAPTER 17.

ADOPTION, CHANGE OF NAME, AND LEGITIMATION OF CHILDREN

ARTICLE 1.

IN GENERAL.

§ 93-17-5. Parties to adoption proceeding; consent of child.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

5. Necessary parties to adoption.
6. Rights of unmarried natural father.

I. UNDER CURRENT LAW.

5. Necessary parties to adoption.

Father had a constitutional right to notice if he had established a substantial relationship with the child prior to the filing of the adoption petition, and if he had established such a relationship, then the failure to give him notice and join him as a party under Miss. Code Ann. § 93-17-5(1)(a) was a jurisdictional defect and the resulting adoption decree would have to be set aside notwithstanding the statute of limitations. Remand was required. Stacks v. Smith, 291 So. 3d 809, 2020 Miss. App. LEXIS 51 (Miss. Ct. App. 2020).

6. Rights of unmarried natural father.

There is nothing in the amendment to Miss. Code Ann. § 93-17-5(3) to suggest that the Legislature intended to impose a new requirement of notice to a biological father who has never established paternity or any substantial relationship with the child; the court simply interprets the statute in a manner consistent with the longstanding constitutional requirement of notice to a biological father who has established a substantial relationship with the child prior to the adoption. Stacks v. Smith, 291 So. 3d 809, 2020 Miss. App. LEXIS 51 (Miss. Ct. App. 2020).

§ 93-17-15. Limitation on action to set aside final decree.

JUDICIAL DECISIONS

2. Fraud and misrepresentation.

Father's petition alleged facts that would support a claim that the adoption was obtained by a fraud upon the court; the chancery court erred in dismissing the petition based on the statute of limitations without an evidentiary hearing because proof that the adoption was obtained by a fraud upon the court would permit the court to set aside the judgment notwithstanding the statute of limitations. Stacks v. Smith, 291 So. 3d 809, 2020 Miss. App. LEXIS 51 (Miss. Ct. App. 2020).

CHAPTER 21.

PROTECTION FROM DOMESTIC ABUSE

ARTICLE 1.

PROTECTION FROM DOMESTIC ABUSE LAW.

§ 93-21-15.1. Appeal of temporary or final domestic abuse protection order.

JUDICIAL DECISIONS

1. Jurisdiction.

Circuit court properly denied an ex-husband's appeal of a domestic abuse protection order for lack of jurisdiction because, while the court found that the order was interlocutory, there was no statutory distinction that classified a final domestic abuse protection order as interlocutory and not subject to review, and if the ex-husband wished to seek an appeal from the order, he had to do so in chancery court. Carter v. Carter, 304 So. 3d 1160, 2020 Miss. App. LEXIS 571 (Miss. Ct. App. 2020).

TITLE 97.

CRIMES

CHAPTER 1.

CONSPIRACY, ACCESSORIES AND ATTEMPTS

§ 97-1-1. Conspiracy.

JUDICIAL DECISIONS

ANALYSIS

9. Evidence.
14. —Sufficiency.
16. —Other.

9. Evidence.

14. —Sufficiency.

Evidence was sufficient to support defendants' convictions of conspiracy because one defendant was the driver of the vehicle in which the victim was held against his will and placed in the trunk, that defendant was present when the second defendant put a gun to the victim's head and forced him to pretend to have sex with a telephone pole, he was present when the second defendant poured diesel fuel on the victim and when he forced a stick into the victim's rectum. Both defendants were convicted of kidnapping. Magee v. State, — So. 3d —, 2022 Miss. App. LEXIS 108 (Miss. Ct. App. Apr. 5, 2022).

Reasonable jury could find the elements of conspiracy were proved beyond a reasonable doubt because there was a mutual agreement to commit armed robbery among defendant and his co-conspirators; after the robbery, defendant sped away from a store as soon as the co-conspirators entered a van, showing defendant expected a crime to occur and acted as the getaway driver for his part in the crime, and defendant and the co-conspirators all shared the proceeds from their crime. Edwards v. State, — So. 3d —, 2022 Miss. App. LEXIS 123 (Miss. Ct. App. Apr. 19, 2022).

16. —Other.

Defendant's convictions for armed robbery and conspiracy to commit armed robbery were not contrary to the weight of the evidence because a co-conspirator's testimony was not so incredible that the jury could not accept it as truthful, and the video footage corroborated his testimony; Defendant's convictions did not hinge entirely on the co-conspirator's testimony but also on the testimony of another co-conspirator, a detective, the store clerk, as well as the security video. Edwards v. State, — So. 3d —, 2022 Miss. App. LEXIS 123 (Miss. Ct. App. Apr. 19, 2022).

§ 97-1-3. Accessories before the fact.

JUDICIAL DECISIONS

ANALYSIS

5. Evidence.
6. Instructions.

5. Evidence.

Court of Appeals properly affirmed defendant's conviction for conspiracy and possession with intent to distribute, because while the Court erred in finding that defendant constructively possessed the drugs, the evidence was more than sufficient for a reasonable jury to find, beyond a reasonable doubt, that defendant was guilty of two counts of possession with intent to distribute on the

theory that he was an accessory before the fact—his jailers recorded numerous telephone conversations in which he appeared to be directing a drug trafficking ring. Williams v. State, 334 So. 3d 68, 2022 Miss. LEXIS 50 (Miss. 2022).

Where defendant was tried as an accessory before the fact to a murder, sufficient evidence was presented to support defendant's conviction of first-degree murder, in violation of Miss. Code Ann. § 97-3-19 (Supp. 2018), including that he dropped off the shooter, who had a gun cocked, so that the shooter could locate and kill the victim. Johnson v. State, 290 So. 3d 1232, 2020 Miss. LEXIS 35 (Miss. 2020).

6. Instructions.

Because the evidence was sufficient to show that defendant aided and abetted his co-defendants in the burglary of the victim's home his motions for a direct verdict and judgment notwithstanding the verdict and his request for a peremptory instruction were properly denied. The State provide overwhelming evidence establishing that defendant planned both burglaries, provided tools and information to his co-defendants, and received money and property from the burglary. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

Accomplice-liability jury instruction did not constructively amend the indictment because defendant, as an accomplice to a felony before the fact, was liable as a principal. The indictment charged him with "acting in concert" with his co-defendants to burglarize the home and the evidence showed that he planned both burglaries, provided tools and information to his co-defendants, and received money and property from the burglary. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

There was no error in the jury instruction because the theory of accessory before the fact was not without foundation and was an issue within the realm for a jury to decide. Although defendant was not physically present at the time of the burglaries, there were several testimonies showing that he aided his co-defendants in the commission of the crimes and thus, sufficient evidence existed to present an accomplice-liability instruction to the jury. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

§ 97-1-7. Attempt to commit offense; punishment.

JUDICIAL DECISIONS

ANALYSIS

3. Particular offenses.
7. —Homicide.
12. Instructions

3. Particular offenses.

7. —Homicide.

Defendant's indictment sufficiently notified him of the charge against him because the Legislature did not include a requirement to describe an overt act in an indictment under the attempted murder statute. Defendant's indictment used the word "attempt" and it contained the statutory language that defendant acted with the deliberate design to effect the death of the officer but failed to successfully complete the act, which indicated the failure to complete the attempted crime. Beale v. State, — So. 3d —, 2022 Miss. App. LEXIS 128 (Miss. Ct. App. Apr. 26, 2022).

12. Instructions

Jury instructions 8 and 9 effectively laid out all the essential elements of attempted murder, despite including the words "shoot at," and the variance did not prejudice defendant's defense. The fact that the instructions included the phrase "shoot at" did not substantially alter the elements or proof necessary to find defendant guilty of attempted murder. Beale v. State, — So. 3d —, 2022 Miss. App. LEXIS 128 (Miss. Ct. App. Apr. 26, 2022).

CHAPTER 3.
CRIMES AGAINST THE PERSON

§ 97-3-2. Crimes of violence defined.

JUDICIAL DECISIONS

2. Ex post facto.

Petitioner's request for expungement was properly denied because the statute, which was passed after he had been sentenced for burglary and which made burglary of a dwelling in Miss. Code Ann. §§ 97-17-23 and 97-17-37 crimes of violence, was not a new penalty for an earlier crime, nor did it change petitioner's punishment in any way, so applying the statute to petitioner's crime did not constitute an ex post facto law. Watson v. State, 329 So. 3d 1215, 2021 Miss. App. LEXIS 456 (Miss. Ct. App. 2021).

§ 97-3-7. Simple assault; aggravated assault; simple domestic violence; simple domestic violence third; aggravated domestic violence; aggravated domestic violence third.

JUDICIAL DECISIONS

ANALYSIS

1. In general; definitions and distinctions.
12. Double jeopardy.
13. Evidence; generally.
14. — Admissibility.
18. — Sufficiency.
22. Instructions; generally.

1. In general; definitions and distinctions.

Age is not an element of the crime of aggravated assault; instead, it can be used as an aggravator per statute to extend the time of incarceration and to impose a monetary fine. Jones v. State, 326 So. 3d 521, 2021 Miss. App. LEXIS 379 (Miss. Ct. App. 2021).

12. Double jeopardy.

Defendant's convictions for aggravated assault and abuse of a vulnerable person did not violate double jeopardy; victim's age was not a prerequisite to finding defendant guilty of aggravated assault. Instead, the victim's age was considered an aggravating circumstance once the elements of the crime were met. The aggravator of a conviction for attacking a person 65 years or older does not delineate an independent substantive offense from the crime of aggravated assault, and so does not trigger a violation of double jeopardy. Jones v. State, 326 So. 3d 521, 2021 Miss. App. LEXIS 379 (Miss. Ct. App. 2021).

13. Evidence; generally.

14. — Admissibility.

With or without the stick, the jury could have found that defendant committed aggravated assault on the victim, who testified that she was hit with a stick, she was attacked on her front porch, and later she found a portion of a stick there, which a detective reasoned matched the injuries she sustained. It was not an abuse of discretion for the trial court to admit the piece of wood into evidence, and once admitted, it was up to the jury to determine if it was authentic. Jones v. State, 326 So. 3d 521, 2021 Miss. App. LEXIS 379 (Miss. Ct. App. 2021).

18. — Sufficiency.

There was sufficient evidence for a rational trier of fact to have rendered a guilty verdict for simple assault on a law enforcement officer, in violation of Miss. Code Ann. § 97-3-7(1)(a) (Supp. 2016),

where an officer testified defendant hit him in the chest and bit him, and another officer testified that defendant kicked the officer in the groin. Bradford v. State, — So. 3d —, 2022 Miss. App. LEXIS 121 (Miss. Ct. App. Apr. 19, 2022).

Sufficient evidence supported defendant's convictions of aggravated assault and abuse of a vulnerable person; the victim was hit with a stick on her front porch, and while she did not see her attacker, she saw him flee in her neighbor's daughter's car, as did another neighbor, and defendant was later pulled over driving that car. Although he argued that there was no DNA evidence, the State was given the benefit of all reasonable inferences. Jones v. State, 326 So. 3d 521, 2021 Miss. App. LEXIS 379 (Miss. Ct. App. 2021).

Evidence supported defendant's conviction for aggravated assault because witnesses, including the complainant, testified that defendant watched another individual place the complainant who was bound with duct tape in a bath tub filled with hot water and then used a gun to play Russian Roulette with the complainant, defendant never told the other individual to stop, defendant told a person who came to the house that the complainant was going to be harmed, and photographs of the third-degree burns which the complainant suffered were presented. Jones v. State, 330 So. 3d 793, 2021 Miss. App. LEXIS 504 (Miss. Ct. App. 2021).

22. Instructions; generally.

State of Mississippi failed to adequately instruct the jury on all elements of aggravated assault by omitting the word "serious" from the phrase "serious bodily injury" so that the instruction was inadequate as it broadened the grounds upon which defendant was convicted. The jury was no longer required to consider how serious the victim's injuries were. Kivinen v. State, 314 So. 3d 167, 2021 Miss. App. LEXIS 136 (Miss. Ct. App. 2021).

§ 97-3-15. Homicide; justifiable homicide; use of defensive force; duty to retreat.

JUDICIAL DECISIONS

ANALYSIS

4. Self-defense; generally.
5. —Evidence.
7. Instructions; generally.
8. —Self-defense.

4. Self-defense; generally.

5. —Evidence.

Even if a jury could have reasonably found that defendant acted in self-defense when he shot the victim the first time, with respect to the second and third shots, the jury could reasonably infer that the victim was unarmed and that these additional shots were unnecessary and thus negated defendant's self-defense claim; the jury heard testimony that defendant immediately fled the scene and hid out in Memphis, actions a jury may reasonably find relevant in considering his self-defense claim. Wayne v. State, — So. 3d —, 2022 Miss. App. LEXIS 132 (Miss. Ct. App. Apr. 26, 2022).

7. Instructions; generally.

8. —Self-defense.

By giving defendant's requested jury instruction on the excuse of accident, the trial judge allowed him to present his theory of defense that was supported by the evidence. The trial judge properly refused defendant's requested instruction on self-defense because defendant failed to present evidence to support it; defendant's own statements and testimony contradicted and negated a claim of self-defense. Figueroa v. State, — So. 3d —, 2021 Miss. App. LEXIS 433 (Miss. Ct. App. Oct. 26, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 133 (Miss. 2022).

§ 97-3-19. Homicide; murder defined; first-degree murder; second-degree murder; capital murder; lesser-included offenses.

JUDICIAL DECISIONS

ANALYSIS

I. IN GENERAL.

8. Deliberate design; malice.
22. Indictment.

II. EVIDENTIARY MATTERS.

36. Evidence; generally.

I. IN GENERAL.

8. Deliberate design; malice.

Defendant's first degree murder conviction upheld because sufficient evidence established he killed the victim with deliberate design without authority of law based on the State presenting several witnesses, including an eyewitness who testified seeing defendant shoot the victim deliberately, another who saw defendant walk toward the victim's car moments before the shooting, and an expert witness who identified at least one of the shell casings matched the handgun that was found on defendant. Easterling v. Mississippi, 306 So. 3d 808, 2020 Miss. App. LEXIS 360 (Miss. Ct. App.), cert. denied, 308 So. 3d 439, 2020 Miss. LEXIS 512 (Miss. 2020).

22. Indictment.

Defendant's indictment did not fail to list an essential element of the murder charge because the indictment included the essential elements as required by statute and precedent; the manner by which he caused the victim's death was not required for the indictment because the cause of death was not an essential element of murder. Carter v. State, 313 So. 3d 495, 2020 Miss. App. LEXIS 118 (Miss. Ct. App. 2020), cert. denied, 312 So. 3d 729, 2021 Miss. LEXIS 81 (Miss. 2021).

Indictment for capital murder while in the commission of felonious child abuse comported with Mississippi law and due process as it properly set forth the elements of capital murder and identified the underlying felony, section, and subsection of the statute defining felony child abuse. Nothing more than what was listed was required. Lewis v. State, 295 So. 3d 521, 2019 Miss. App. LEXIS 530 (Miss. Ct. App. 2019), cert. denied, 293 So. 3d 834, 2020 Miss. LEXIS 134 (Miss. 2020).

II. EVIDENTIARY MATTERS.

36. Evidence; generally.

Jury could infer that defendant intended to kill the victim by shooting him, then chasing him and shooting him two more times, once in the back of his left leg and once in the buttocks; the State proved beyond a reasonable doubt that defendant was not acting in justifiable self-defense and that there was sufficient evidence to support his conviction for first-degree murder. Wayne v. State, — So. 3d —, 2022 Miss. App. LEXIS 132 (Miss. Ct. App. Apr. 26, 2022).

§ 97-3-35. Homicide; killing without malice in the heat of passion.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
6. Evidence; generally.
7. — Warranting manslaughter.

1. In general.

Miss. Code Ann. § 97-3-35 is not divided into differing counts or degrees; the statute includes two theories of manslaughter, heat of passion and imperfect self-defense,

and these theories are not degrees of an offense that must be specified per Miss. R. Crim. P. 24.2(c). Jones v. State, 334 So. 3d 108, 2022 Miss. LEXIS 60 (Miss. 2022).

Jury's general verdict should be upheld if sufficient evidence supported defendant's manslaughter conviction, even when the jury was instructed on two factual theories, and thus the circuit court did not err by not requiring the jury to specify its verdict. Jones v. State, 334 So. 3d 108, 2022 Miss. LEXIS 60 (Miss. 2022).

6. Evidence; generally.

7. — Warranting manslaughter.

While defendant argued for reversal because there was insufficient evidence to support a heat-of-passion-manslaughter conviction, either theory, heat of passion or imperfect self-defense, could support a manslaughter conviction if either theory was supported by sufficient evidence, and here, there was sufficient evidence as the jury could have found that defendant shot the victim out of anger after being provoked by the victim's prior confrontation. Jones v. State, 334 So. 3d 108, 2022 Miss. LEXIS 60 (Miss. 2022).

§ 97-3-47. Homicide; all other killings.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
16. Evidence sufficient.

1. In general.

Intoxication is not a required element of culpable negligence manslaughter. Butler v. State, — So. 3d —, 2022 Miss. App. LEXIS 97 (Miss. Ct. App. Mar. 22, 2022).

16. Evidence sufficient.

Sufficient evidence supported defendant's conviction of culpable negligence manslaughter; under the influence or not, other factors were present upon which a jury could have found defendant guilty, including his violation of five boating rules leading up to the collision, his admission that he was going too fast, and his failure to make any effort to avoid the accident. Butler v. State, — So. 3d —, 2022 Miss. App. LEXIS 97 (Miss. Ct. App. Mar. 22, 2022).

§ 97-3-53. Kidnapping; punishment.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

3. Evidence.

Evidence was sufficient to support defendants' kidnapping convictions because the evidence showed that after they bailed the victim out of jail and the victim could not get money for the bond, defendants took him to buy cocaine in lieu of money, and when he returned to the vehicle without the drugs one defendant got made and pulled a gun, handcuffed the victim, and put him in the trunk. Magee v. State, — So. 3d —, 2022 Miss. App. LEXIS 108 (Miss. Ct. App. Apr. 5, 2022).

Evidence supported defendant's conviction for kidnapping because witnesses, including the complainant, testified that when the complainant came to defendant's house to retrieve a cell phone defendant emerged from the back of the house with a gun minutes after the complainant arrived; another individual bound the complainant's arms, ribs, wrists, and ankles with duct tape and put the complainant in a closet while defendant watched; and defendant pointed a gun at the complainant and threatened to shoot the complainant. Jones v. State, 330 So. 3d 793, 2021 Miss. App. LEXIS 504 (Miss. Ct. App. 2021).

Evidence supported the kidnapping

conviction given the victim's testimony that he believed that he was being held at gunpoint, he was ordered into the car and told to drive to an unknown location, and he complied because he thought that appellant had a gun. Brent v. State, 296 So. 3d 42, 2020 Miss. LEXIS 34 (Miss. 2020).

§ 97-3-79. Robbery; use of deadly weapon.

JUDICIAL DECISIONS

12. Sufficiency of evidence; generally.

13. — Exhibition or use of weapon.

Evidence supported appellant's armed-robbery conviction where the victim testified that appellant approached him from behind, held something hard like the barrel of a gun against the back of his head, demanded money, and threatened to shot him, and the victim feared for his life. Brent v. State, 296 So. 3d 42, 2020 Miss. LEXIS 34 (Miss. 2020).

§ 97-3-82. Extortion; definitions; offense and penalties.

JUDICIAL DECISIONS

1. Sufficiency of evidence.

Evidence sufficiently supported defendant's attempted extortion conviction, as his purpose in seizing and detaining the victim was to film him being sexually battered, threaten to post the videos on social media, and use that material to extort him. Mitchell v. State, 327 So. 3d 142, 2021 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 328 So. 3d 1252, 2021 Miss. LEXIS 311 (Miss. 2021).

§ 97-3-95. Sexual battery.

JUDICIAL DECISIONS

ANALYSIS

6. Indictment.
7. Evidence; generally; admissibility.

6. Indictment.

Defendant's indictment for sexual battery was not defective for failing to define an essential element of the offense because the allegation that defendant inserted his fingers into the victim's "private parts" provided was sufficient to provide him with ample notice of the charge against him. Thompson v. State, — So. 3d —, 2022 Miss. App. LEXIS 107 (Miss. Ct. App. Apr. 5, 2022).

7. Evidence; generally; admissibility.

Jury verdict convicting defendant of fondling a child under the age of sixteen and one count of sexual battery of a child under the age of sixteen was not against the overwhelming weight of the evidence, which included the victim's testimony that defendant had touched her around her legs and private area and had put his private area in her private area. Tate v. State, 331 So. 3d 57, 2021 Miss. App. LEXIS 479 (Miss. Ct. App. 2021).

§ 97-3-104. Crime of sexual activity between certain individuals and offenders incarcerated in correctional facilities or on correctional supervision; sanctions.

JUDICIAL DECISIONS

1. Sex offender registration.

Miss. Code Ann. § 45-33-23(h)(xvii) requires registration for all convictions under Miss. Code Ann. § 97-3-104; while § 45-33-23(h)(xvii) does not specifically list as a registrable-offense sexual relations involving an offender on intensive supervision, a law-enforcement officer who engages in sexual relations with an offender on intensive-supervision parole also must register as a sex offender. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Trial court erred by dispensing with defendant's registration as a sex offender after defendant was convicted of engaging in sexual activity with a probationer because public policy supported the conclusion that defendant committed a registrable offense; public policy supports the conclusion that Miss. Code Ann. § 45-33-23(h)(xvii) encompasses offenses involving probationers because a law-enforcement officer is in a unique position of power over a probationer. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Although Miss. Code Ann. § 45-33-23(h)(xvii) does not specifically include the term "probationer," it encompasses the entirety of convictions under Miss. Code Ann. § 97-3-104 as registrable offenses; the subsections under § 45-33-23(h) do not cite the exact language of the statutes that require registration as a sex offender but instead give a general description of the statutory section. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Trial court erred by dispensing with defendant's registration requirement after defendant was convicted of engaging in sexual activity with a probationer because all convictions under the statute resulted in a requirement to register as a sex offender. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Language in Miss. Code Ann. § 45-33-23(h)(xvii) is sufficient to cover convictions under Miss. Code Ann. § 97-3-104 as a whole; because the subsections under § 45-33-23(h) list brief descriptions of the statutes that require sex-offender registration and do not track the full language of the statutes, § 45-33-23(h)(xvii) includes all convictions under § 97-3-104 as registrable sex offenses. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

CHAPTER 5.

OFFENSES AFFECTING CHILDREN

§ 97-5-23. Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person.

JUDICIAL DECISIONS

3. Evidence.

Sufficient evidence supported defendant's conviction for two counts of fondling because the victim testified that on two occasions, prior to her 18th birthday, she had sexual contact with defendant, a teacher at the school where she was a student where, once she performed oral sex on defendant, at his request, and the other time defendant put his hand in her pants and touched her vagina. The State also introduced the audio recordings that the victim had recorded of herself and defendant, as well as defendant's written

statement to an investigator. Barnes v. State, — So. 3d —, 2022 Miss. App. LEXIS 115 (Miss. Ct. App. Apr. 12, 2022).

Jury verdict convicting defendant of fondling a child under the age of sixteen and one count of sexual battery of a child under the age of sixteen was not against the overwhelming weight of the evidence, which included the victim's testimony that defendant had touched her around her legs and private area and had put his private area in her private area. Tate v. State, 331 So. 3d 57, 2021 Miss. App. LEXIS 479 (Miss. Ct. App. 2021).

§ 97-5-33. Exploitation of children; prohibitions.

JUDICIAL DECISIONS

1. In general.

Because transmitting a single photograph of a single message constituted a single offense under Miss. Code Ann. § 97-5-33, the indictment, which charged defendant with three separate transmissions, was not improperly multiplicitous for double jeopardy purposes. Tallant v. State, — So. 3d —, 2021 Miss. App. LEXIS 512 (Miss. Ct. App. Dec. 14, 2021).

§ 97-5-39. Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

2. Indictment.
4. Evidence.

I. UNDER CURRENT LAW.

2. Indictment.

Indictment for capital murder while in the commission of felonious child abuse comported with Mississippi law and due process as it properly set forth the elements of capital murder and identified the underlying felony, section, and subsection of the statute defining felony child abuse. Nothing more than what was listed was required. Lewis v. State, 295 So. 3d 521, 2019 Miss. App. LEXIS 530 (Miss. Ct. App. 2019), cert. denied, 293 So. 3d 834, 2020 Miss. LEXIS 134 (Miss. 2020).

4. Evidence.

Defendant was the girls' primary caregiver while they were at her daycare, and the State provided evidence to show the girls were in her sight when her husband sexually abused them; the State presented witnesses who testified that defendant was either in the kitchen, sitting next to the children and her husband, or in the backroom when the abuse occurred, and the testimony proved beyond a reasonable doubt that defendant knowingly permitted the husband's sexual abuse. Westmoreland v. State, — So. 3d —, 2021 Miss. App. LEXIS 495 (Miss. Ct. App. Nov. 30, 2021).

§ 97-5-51. Mandatory reporting of sex crimes against minors; definitions; procedure; report contents; forensic samples; penalties.

JUDICIAL DECISIONS

1. Applicability.

Defendant was a mandatory reporter of child sex abuse where she owned and ran an unlicensed daycare out of her home, and she had a legal duty to report any reasonably suspected sex crimes against

the minor children in her daycare; there was sufficient evidence that could lead a reasonable trier of fact to conclude beyond a reasonable doubt that defendant knowingly permitted the sexual abuse of three children and that she violated the mandatory-reporter requirement because it was reasonable for defendant to suspect that a sex crime against one victim occurred. Westmoreland v. State, — So. 3d —, 2021 Miss. App. LEXIS 495 (Miss. Ct. App. Nov. 30, 2021).

CHAPTER 7.

CRIMES AGAINST SOVEREIGNTY OR ADMINISTRATION OF GOVERNMENT

§ 97-7-10. Fraudulent statements and representations.

JUDICIAL DECISIONS

1. Evidence.

State did not increase its burden of proving that defendant used or made defendant an order to defraud a state governmental entity under Miss. Code Ann. § 97-7-10 when the indictment included the factual allegation that defendant submitted the fraudulent order to the circuit court clerk as the particular government entity receiving the fraudulent order was not a necessary element of the crime. Walker v. State, — So. 3d —, 2021 Miss. App. LEXIS 502 (Miss. Ct. App. Dec. 7, 2021).

Evidence was sufficient to show that defendant violated Miss. Code Ann. § 97-7-10 where the testimony made clear that a judge did not use electronic signatures, information on a cell phone found on his person showed that defendant had drafted the fraudulent order, and it was reasonable to infer from the testimony that defendant intended to defraud the circuit court and court clerk. Walker v. State, — So. 3d —, 2021 Miss. App. LEXIS 502 (Miss. Ct. App. Dec. 7, 2021).

CHAPTER 9.

OFFENSES AFFECTING ADMINISTRATION OF JUSTICE

ARTICLE 3.

OBSTRUCTION OF JUSTICE.

§ 97-9-113. Intimidating a witness.

JUDICIAL DECISIONS

1. Evidence.

Judgment of the Court of Appeals was reversed because there was there was sufficient evidence for a reasonable jury to find that defendant encouraged or asked the witness to provide false information to hinder or interfere with an ongoing criminal investigation where defendant confronted the witness at her home and tried to speak with her at work on at least two occasions. Rainey v. State, 334 So. 3d 1124, 2022 Miss. LEXIS 67 (Miss. 2022).

§ 97-9-125. Tampering with physical evidence.

JUDICIAL DECISIONS

2. Insufficient evidence.

Evidence was insufficient to convict defendant of possession of cocaine with intent to distribute and tampering with evidence, because there was no evidence that he as opposed to two other customers, possessed and flushed the cocaine found outside the pool hall. The evidence permitted only an inference that one of the three men was guilty, and the jury could only guess as to the guilty party; evidence that defendant had a marked twenty-dollar bill from a prior drug deal in his pocket when he was arrested could not prove that he possessed or flushed the cocaine. Smoots v. State, 310 So. 3d 1184, 2020 Miss. App. LEXIS 373 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 829, 2021 Miss. LEXIS 29 (Miss. 2021).

CHAPTER 17.

CRIMES AGAINST PROPERTY

IN GENERAL

§ 97-17-23. Burglary; breaking and entering inhabited dwelling; home invasion.

JUDICIAL DECISIONS

ANALYSIS

2. Sufficiency of evidence.
6. Jury instructions.
7. Sentence.

2. Sufficiency of evidence.

Because the evidence was sufficient to show that defendant aided and abetted his co-defendants in the burglary of the victim's home his motions for a direct verdict and judgment notwithstanding the verdict and his request for a peremptory instruction were properly denied. The State provide overwhelming evidence establishing that defendant planned both burglaries, provided tools and information to his co-defendants, and received money and property from the burglary. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

For purposes of defendant's burglary conviction, sufficient evidence supported the finding that defendant's entry into the victim's apartment was unauthorized and no evidence suggested that defendant had an ownership interest in it and that the two had any form of marital relationship outside of an ongoing affair and thus, defendant lacked any implied consent to enter the victim's apartment. Body v. State, 318 So. 3d 1104, 2021 Miss. LEXIS 128 (Miss. 2021).

6. Jury instructions.

There was no error in the jury instruction because the theory of accessory before the fact was not without foundation and was an issue within the realm for a jury to decide. Although defendant was not physically present at the time of the burglaries, there were several testimonies showing that he aided his co-defendants in the commission of the crimes and thus, sufficient evidence existed to present an accomplice-liability instruction to the jury. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

7. Sentence.

Defendant was not sentenced according to new rules of criminal procedure, and therefore defendant's sentence had to be

vacated and remanded for a new sentence in accordance with Miss. Code Ann. § 97-17-23(1). Hughes v. State, 291 So. 3d 792, 2020 Miss. App. LEXIS 41 (Miss. Ct. App. 2020).

§ 97-17-33. Burglary; breaking and entering building other than dwelling; railroad car; vessels; automobiles.

JUDICIAL DECISIONS

6. Evidence, generally.

Considering the evidence in the light most favorable to the State, the appellate court was unable to identify evidence of defendant entering a shed. Therefore, the appellate court found that no rational juror could have found defendant guilty of the crime of burglary of the shed, and it was error for the trial court to deny defendant's motion for judgment notwithstanding the verdict on this charge. Hughes v. State, 291 So. 3d 792, 2020 Miss. App. LEXIS 41 (Miss. Ct. App. 2020).

11. —Of possession or disposition of stolen property.

Defendant was properly convicted of two counts of burglary because there was sufficient circumstantial evidence to convict, including, inter alia, officer testimony that defendant fled carrying a backpack stolen from a car that was later found in the bushes containing materials stolen from a church. Ward v. State, 297 So. 3d 286, 2020 Miss. App. LEXIS 69 (Miss. Ct. App. 2020).

§ 97-17-37. Burglary; with explosives.

JUDICIAL DECISIONS

1. In general.

Petitioner's request for expungement was properly denied because Miss. Code Ann. § 97-3-2, which was passed after he had been sentenced for burglary and which made burglary of a dwelling under the statute a crime of violence, was not a new penalty for an earlier crime, nor did it change petitioner's punishment in any way, so applying § 97-3-2 to petitioner's crime did not constitute an ex post facto law. Watson v. State, 329 So. 3d 1215, 2021 Miss. App. LEXIS 456 (Miss. Ct. App. 2021).

§ 97-17-41. Grand larceny; felonious taking of personal property; felonious taking of property of established place of worship; penalties.

JUDICIAL DECISIONS

14. Evidence.

15. —Sufficiency.

Defendant's grand larceny conviction was error as there was no evidence from which it could be found that the items he stole amounted to the $1,000 threshold for grand larceny under the statute. A video showing defendant carrying a crate with a router valued at only $100 was not big enough to contain the other missing items. Pruitt v. State, 289 So. 3d 1227, 2020 Miss. App. LEXIS 38 (Miss. Ct. App. 2020).

CHAPTER 21.

FORGERY AND COUNTERFEITING

ARTICLE 1.

GENERAL PROVISIONS.

§ 97-21-57. Trade-marks; sale of goods bearing counterfeit stamp or label.

JUDICIAL DECISIONS

1. Evidence sufficient.

Evidence was sufficient to support defendant's conviction under this section because we find the State showed that defendant, the store owner, constructively possessed the counterfeit purses and wallets seized from the store, the investigator testified that several of the counterfeit items were clearly displayed for sale in the store and that one item was even located in a clear case next to the cash register, and the investigator testified that the aggregate retail value of the purses and wallets, if not forged or counterfeited, amounted to about $5,426. Murshid v. State, 326 So. 3d 489, 2021 Miss. App. LEXIS 167 (Miss. Ct. App. 2021), cert. denied, 326 So. 3d 466, 2021 Miss. LEXIS 318 (Miss. 2021), cert. denied, — U.S. —, 142 S. Ct. 1172, 212 L. Ed. 2d 42, 2022 U.S. LEXIS 922 (U.S. 2022).

CHAPTER 29.

CRIMES AGAINST PUBLIC MORALS AND DECENCY

IN GENERAL

§ 97-29-61. Voyeurism; trespass by "peeping Tom"; when victim is adult; when victim is child under sixteen.

JUDICIAL DECISIONS

1. In general.

Defense attorney's failure to object to the indictment did not constitute ineffective assistance of counsel because the statute did not require that the person be a "male"; the indictment properly tracked the language of the statute, included the essential elements of voyeurism, and sufficiently informed defendant of the charges against him. Parks v. State, 326 So. 3d 505, 2021 Miss. App. LEXIS 361 (Miss. Ct. App. 2021).

CHAPTER 33.

GAMBLING AND LOTTERIES

IN GENERAL

§ 97-33-8. Illegal gambling; Internet sweepstakes cafes prohibited.

JUDICIAL DECISIONS

1. Jury instructions.

Instruction stating that poker and keno were gambling games and could only be offered on the premises of a licensed gaming establishment fairly stated the applicable law and thus, created no injustice because poker and keno were explicitly illegal under Mississippi's gaming laws; those games could not be part of any lawful marketing promotion, contest, prize, or sweepstakes under the "safe harbor" in Miss. Code Ann. § 97-33-8(5)(b). Moore v. State, 309 So. 3d 7, 2020 Miss. App. LEXIS 391 (Miss. Ct. App. 2020), cert. denied, 309 So. 3d 451, 2021 Miss. LEXIS 8 (Miss. 2021).

CHAPTER 35.

CRIMES AGAINST PUBLIC PEACE AND SAFETY

§ 97-35-7. Disorderly conduct; failure to comply with requests or commands of law enforcement officers; penalties; exception.

JUDICIAL DECISIONS

2. Sufficiency of evidence.

Evidence was sufficient to support defendant's conviction of disorderly conduct because both officers testified that they repeatedly asked defendant to remove his hands from his pockets and he refused each time, and they testified that defendant was irate and cursing at them with people in the surrounding area. Sims v. State, 329 So. 3d 528, 2021 Miss. App. LEXIS 197 (Miss. Ct. App.), cert. denied, 329 So. 3d 1202, 2021 Miss. LEXIS 361 (Miss. 2021).

CHAPTER 37.
WEAPONS AND EXPLOSIVES

GENERAL PROVISIONS

§ 97-37-5. Unlawful for convicted felon to possess any firearms, or other weapons or devices; penalties; exceptions.

JUDICIAL DECISIONS

ANALYSIS

9. Sufficient evidence.
16. Multiple firearms.

9. Sufficient evidence.

Evidence at trial was sufficient to support defendant's conviction of being a felon in possession of a firearm because, although there was no physical evidence presented that defendant physically possessed the firearm, there was circumstantial evidence that he did, including that a rifle and shell casings were found in the home in which he was surrounded during a standoff. Carter v. State, — So. 3d —, 2021 Miss. App. LEXIS 434 (Miss. Ct. App. Oct. 26, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 105 (Miss. 2022).

16. Multiple firearms.

Three of defendant's four convictions for felon-in-possession of a firearm had to be vacated because the language "any firearm" included multiple firearms possessed at the same time and in the same place and the State presented evidence that defendant possessed the four weapons at the same time and in the same small house. McGlasten v. State, 328 So. 3d 101, 2021 Miss. LEXIS 307 (Miss. 2021).

§ 97-37-29. Shooting into dwelling house.

JUDICIAL DECISIONS

1. In general.

Statute was not unconstitutionally vague because the statute had a specific mens rea requirement; due process rights were not violated; and the statute provided clear notice and sufficiently definite warning of that which was prohibited, and that which was allowed. Roberts v. State, — So. 3d —, 2021 Miss. App. LEXIS 204 (Miss. Ct. App. May 11, 2021).

Statute was not unconstitutionally vague because the statute had a specific mens rea requirement; due process rights were not violated; and the statute provided clear notice and sufficiently definite warning of that which was prohibited, and that which was allowed. Roberts v. State, — So. 3d —, 2021 Miss. App. LEXIS 204 (Miss. Ct. App. May 11, 2021).

§ 97-37-37. Enhanced penalty for use of firearm during commission of felony.

JUDICIAL DECISIONS

5. Notice.

Defendant received sufficient notice the State of Mississippi intended to seek a firearm sentence enhancement because the indictment charged defendant with aggravated assault of an officer by shooting at him with a deadly weapon and possession of a firearm by a convicted

felon. Edwards v. State, 305 So. 3d 1186, 2020 Miss. App. LEXIS 161 (Miss. Ct. App.), cert. denied, 308 So. 3d 437, 2020 Miss. LEXIS 476 (Miss. 2020), cert. denied, 308 So. 3d 438, 2020 Miss. LEXIS 475 (Miss. 2020).

CHAPTER 41.

CRUELTY TO ANIMALS

§ 97-41-19. Dog fights.

JUDICIAL DECISIONS

2. Evidence sufficient.

State presented sufficient evidence at trial to support defendant's convictions for dog fighting because an evidence technician with the county sheriff's department stated that when she arrived at defendant's property, she witnessed badly injured dogs running loose, and the items she collected were consistent with paraphernalia of dog fighting; a veterinarian testified that the dogs all had bite wounds and lacerations that were incurred from another dog. Queen v. State, 325 So. 3d 656, 2021 Miss. LEXIS 263 (Miss. 2021).

CHAPTER 45.

COMPUTER CRIMES AND IDENTITY THEFT

§ 97-45-17. Posting of messages through electronic media for purpose of causing injury to any person; penalties.

JUDICIAL DECISIONS

1. Constitutionality.

Miss. Code Ann. § 97-45-17 violated the First Amendment because it was unconstitutionally overbroad. Specifically, the statute purported to criminalize any communication, whether true or untrue, that was intended to cause injury to any person, and since it did not define injury, the statute thus criminalized a substantial amount of protected speech, such as core political speech, speech about public figures, and offensive parodies. Edwards v. State, 294 So. 3d 671, 2020 Miss. App. LEXIS 117 (Miss. Ct. App. 2020).

TITLE 99.

CRIMINAL PROCEDURE

CHAPTER 5.

BAIL

§ 99-5-27. Bail agent may arrest and surrender principal; return of defendant out on bond.

JUDICIAL DECISIONS

1. In general.

Defendants' actions were not justified by this section and their kidnapping convictions were affirmed because the evidence showed that defendants never surrendered the victim to the jail, defendants handcuffed him, put him in a trunk of a vehicle, drove him to a remote area, handcuff him to a post, and sexually assaulted him for not paying an amount owed on a bond. Magee v. State, — So. 3d —, 2022 Miss. App. LEXIS 108 (Miss. Ct. App. Apr. 5, 2022).

CHAPTER 7.

INDICTMENT

§ 99-7-9. Presentment; entry on minutes of court; warrant to issue; copy of indictment to be served on defendant; informing victim as to status of charge.

JUDICIAL DECISIONS

7. Waiver of defects.

Issues raised by defendant that the indictment was fatally defective as the grand jury foreman did not sign it, nor was it accompanied by an affidavit from the foreman as required by Miss. Code Ann. § 99-7-9 were technical and nonjurisdictional deficiencies that were waived because defendant failed to timely raise them in the trial court. Smith v. State, 328 So. 3d 204, 2021 Miss. App. LEXIS 382 (Miss. Ct. App. 2021).

§ 99-7-37. Murder and manslaughter.

JUDICIAL DECISIONS

4. Sufficiency of indictment.

Defendant's indictment did not fail to list an essential element of the murder charge because the indictment included the essential elements as required by statute and precedent; the manner by which he caused the victim's death was not required for the indictment because the cause of death was not an essential element of murder. Carter v. State, 313 So. 3d 495, 2020 Miss. App. LEXIS 118 (Miss. Ct. App. 2020), cert. denied, 312 So. 3d 729, 2021 Miss. LEXIS 81 (Miss. 2021).

CHAPTER 19.

JUDGMENT, SENTENCE, AND EXECUTION

IN GENERAL

§ 99-19-71. Expunction of misdemeanor conviction of first offender upon petition; expunction of certain felony convictions upon petition.

JUDICIAL DECISIONS

1. In general.

Trial court appropriately vacated an order of expungement under Miss. R. Civ. P. 60(b)(6), although express findings were not made, because the facts in the record sufficed to show that the order granting the motion to set aside the order of expungement could have and should have been set aside; nothing entitled appellant to an expungement because he already had been indicted with the potential enhanced-sentencing penalty for two years before the filing of his expungement. Johnson v. State, 333 So. 3d 116, 2022 Miss. App. LEXIS 12 (Miss. Ct. App. 2022).

SENTENCING OF HABITUAL CRIMINALS

§ 99-19-81. Sentencing of habitual criminals to maximum term of imprisonment.

JUDICIAL DECISIONS

ANALYSIS

3. Sufficiency of prior sentences, generally.
5. —Separate incidents.
16. Proof of prior conviction or sentence.
17. Particular circumstances.
20. Habitual offender sentences.

3. Sufficiency of prior sentences, generally.

5. —Separate incidents.

Defendant received sufficient notice the State of Mississippi intended to charge him as a habitual offender because the State filed a motion to amend the indictment and specifically listed defendant's two prior convictions, defendant made no objections during trial to the sentencing orders showing his previous convictions, and made no argument during sentencing. Edwards v. State, 305 So. 3d 1186, 2020 Miss. App. LEXIS 161 (Miss. Ct. App.), cert. denied, 308 So. 3d 437, 2020 Miss. LEXIS 476 (Miss. 2020), cert. denied, 308 So. 3d 438, 2020 Miss. LEXIS 475 (Miss. 2020).

16. Proof of prior conviction or sentence.

Defendant was properly sentenced as a nonviolent habitual offender because Alleyne and Apprendi did not require the State to prove prior convictions to a jury and the State presented adequate certified evidence to prove defendant's three prior qualifying convictions, to which he did not object. Ward v. State, 297 So. 3d 286, 2020 Miss. App. LEXIS 69 (Miss. Ct. App. 2020).

17. Particular circumstances.

Defendant was properly sentenced as an habitual offender because defendant was properly indicted as a habitual offender, and the State offered three prior convictions to support his habitual of-

fender enhancement; the fact that one of defendant's prior convictions had been used to enhance an earlier sentence for an unrelated offense did not subject defendant to double jeopardy. Carr v. State, 291 So. 3d 1132, 2020 Miss. App. LEXIS 66 (Miss. Ct. App. 2020).

20. Habitual offender sentences.

Based on the indictments contained in the supplemental record on appeal, defendant was properly sentenced as a habitual offender; the indictments showed that defendant was separately charged and convicted for two drug sales that occurred several days apart as the two drug sales clearly constituted separate incidents at different times for purposes of the statute. Manuel v. State, — So. 3d —, 2022 Miss. App. LEXIS 93 (Miss. Ct. App. Mar. 22, 2022).

§ 99-19-83. Sentencing of habitual criminals to life imprisonment.

JUDICIAL DECISIONS

ANALYSIS

6. Indictment.
16. Particular circumstances.

6. Indictment.

Trial court did not err by sentencing defendant under this section because the indictment's clear and express reference to this section was sufficient to put defendant on notice that he could be sentenced under this section. The indictment specifically charged defendant under this section, it specifically alleged that defendant was sentenced to and served separate terms of one year or more for each prior conviction, and it alleged that defendant had been convicted of a crime of violence. Berryman v. State, — So. 3d —, 2021 Miss. App. LEXIS 460 (Miss. Ct. App. Nov. 9, 2021).

16. Particular circumstances.

State had proved appellant's status as a violent habitual offender under Miss. Code Ann. § 99-19-83 where a regional corrections director testified about appellant's past incarcerations, and certified copies of his two prior armed-robbery convictions and sentences were placed into evidence. Brent v. State, 296 So. 3d 42, 2020 Miss. LEXIS 34 (Miss. 2020).

SEPARATE SENTENCING PROCEEDING TO DETERMINE PUNISHMENT IN CAPITAL CASES

§ 99-19-101. Jury to determine punishment in capital cases in separate sentencing proceeding; aggravating and mitigating circumstances to be considered.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

3. Jury determination.
37. Ineffective assistance of counsel.
41. Resentencing.

I. UNDER CURRENT LAW.

3. Jury determination.

Circuit judge did not err by proceeding without a jury because the statute did not apply in the context of a postconviction

relief motion filed by a prisoner whose conviction and sentence were already final when Miller was decided. Booker v. State, — So. 3d —, 2019 Miss. App. LEXIS 661 (Miss. Ct. App. 2019).

37. Ineffective assistance of counsel.

Appellant failed to show that his attorney provided ineffective assistance for failing to demand funds for a mitigation expert because there was nothing to suggest that either of counsel's alleged errors (even assuming that they were errors) had any effect on the postconviction relief proceeding, since there was nothing to suggest that any additional interviews would have yielded evidence that would have been relevant or persuasive under Miller. Nor was there anything to suggest that the psychologist or some other psychologist could or would have testified persuasively regarding appellant's alleged capacity for rehabilitation or growth and development. Booker v. State, — So. 3d —, 2019 Miss. App. LEXIS 661 (Miss. Ct. App. 2019).

41. Resentencing.

Circuit court did not abuse its discretion by denying relief from appellant's sentence of life without parole under Miller because it found that appellant was 16 years old when he committed the murder, the victim was a 52-year-old disabled Navy veteran, although the murder may have been "amateurish," the extended planning by appellant and his accomplices belied any impetuosity of youth, and the evidence showed that appellant helped to plan the crime, was then an enthusiastic participant in beating the victim to death, and even enlisted his own cousin to help in the murder. Booker v. State, — So. 3d —, 2019 Miss. App. LEXIS 661 (Miss. Ct. App. 2019).

CHAPTER 35.

APPEALS

ARTICLE 3.

APPEALS TO SUPREME COURT AND RELATED PROCEDURES.

§ 99-35-101. Right of appeal.

JUDICIAL DECISIONS

5. Plea of guilty, effect of.

Appellant's filings for an order to show cause were successive motions for postconviction relief, and thus, the circuit court lacked jurisdiction to consider them; because appellant pleaded guilty and could not directly appeal his convictions and sentences, the supreme court would not have jurisdiction to consider any applications for leave to proceed in the trial court. Nance v. State, 327 So. 3d 1089, 2021 Miss. App. LEXIS 389 (Miss. Ct. App. 2021).

§ 99-35-115. Bail after conviction of felony; application for emergency hearing upon denial of bail.

JUDICIAL DECISIONS

3. Denial of bond.

Circuit court correctly denied defendant's request to be released on bail pending appeal because it found that he failed

to prove that his release would not constitute a special danger to another person or to the community. Defendant was "the mastermind" of the 2015 and 2018 burglaries and that he recruited people to do this crime, he gave the instructions when to go, and he talked his co-defendants through it. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

CHAPTER 39.

POST-CONVICTION PROCEEDINGS

ARTICLE 1.

MISSISSIPPI UNIFORM POST-CONVICTION COLLATERAL RELIEF ACT.

§ 99-39-5. Grounds for relief; time limitations; "biological evidence" defined.

JUDICIAL DECISIONS

ANALYSIS

5. Ineffective assistance of counsel.
7. Newly discovered evidence.
8. Claim that person other than defendant committed crime.
11. Timeliness.
12. Successive writs.
15. Double jeopardy.

5. Ineffective assistance of counsel.

Circuit court did not abuse its discretion in dismissing appellant's postconviction relief motions because defendant did not receive ineffective assistance of counsel (as an exception to the timeliness procedural bar) for having failed to interview the affiants because two of the affidavits were signed 20 years before appellant's release from prison and the third affidavit was signed several months prior to his release from prison. Mangum v. State, 333 So. 3d 634, 2022 Miss. App. LEXIS 40 (Miss. Ct. App. 2022).

7. Newly discovered evidence.

Circuit court did not abuse its discretion in dismissing appellant's postconviction relief (PCR) motions because they barred by both the statute of limitations and the successive-motions bar, as they were his sixth and seventh PCR motions and they were filed 36 years after his murder conviction. There was not a newly discovered evidence exception because, since the three affiants were known to appellant at the time of his arrest and his guilty plea, the evidence could have been reasonably discovered at the time of his guilty plea. Mangum v. State, 333 So. 3d 634, 2022 Miss. App. LEXIS 40 (Miss. Ct. App. 2022).

Circuit court properly dismissed the postconviction relief petition because, when appellant pled guilty, he waived his right to later contest the search warrant or evidence obtained through its execution. Regardless, the first page of the search warrant was contained in the record, there was nothing in the record justifying why any contention regarding the search warrant could not have been raised within three years of appellant's guilty plea, and there was no evidence to explain the near-decade lapse in presenting the affidavit from his ex-wife (claiming she never saw a search warrant). Bevalaque v. State, — So. 3d —, 2022 Miss. App. LEXIS 126 (Miss. Ct. App. Apr. 26, 2022).

8. Claim that person other than defendant committed crime.

Defendant's conviction for armed robbery was reversed because the post conviction court failed to address all the is-

sues and evidence presented by erroneously concluding that testimony of another's confessions were inadmissible at a new trial and by not addressing defendant's Brady violation challenge. Hughes v. State, 309 So. 3d 542, 2020 Miss. App. LEXIS 40 (Miss. Ct. App. 2020).

11. Timeliness.

Circuit court properly found that petitioner's postconviction collateral relief motion was time-barred given judicial precedent that the claim of an involuntary guilty plea was subject to such time bar, and petitioner filed his motion six-and-a-half years after he was sentenced. Crockett v. State, 334 So. 3d 1232, 2022 Miss. App. LEXIS 77 (Miss. Ct. App. 2022).

Petitioner's 2019 postconviction relief (PCR) motion was untimely because it was filed over eight years after his conviction. Further, because it was a successive motion and was based on grounds for relief that the appellate court had previously denied, his motion was successive-writ barred and precluded by the doctrine of res judicata. Davis v. State, — So. 3d —, 2022 Miss. App. LEXIS 91 (Miss. Ct. App. Mar. 22, 2022).

PCR motion was properly denied as to a 2006 felony DUI conviction as the claim was filed 13 years after the conviction, and thus, it was too late. Porras v. State, — So. 3d —, 2022 Miss. App. LEXIS 120 (Miss. Ct. App. Apr. 19, 2022).

Circuit court properly denied defendant's second motion for post-conviction relief without holding an evidentiary hearing based on the successive-motions bar and the statute of limitations of the Uniform Post-Conviction Collateral Relief Act because the record revealed no reason why defendant was prevented from timely asserting his claim for ineffective assistance of counsel, his claim did not involve any exceptional or extraordinary circumstances, and the Equal Protection Clause was not violated by enforcing a post-conviction statute of limitations that applied equally to all defendants. Smith v. State, 334 So. 3d 1199, 2021 Miss. App. LEXIS 394 (Miss. Ct. App. 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 86 (Miss. 2022).

12. Successive writs.

Petitioner's post-conviction claims were procedurally barred because the motion was filed outside the one-year filing period, the motion was subject to the successive writ bar, petitioner was prohibited by res judicata from raising claims that had been addressed already in prior proceedings, and he waived claims and issues that were not previously raised, and no exception to those procedural bars applied. Knox v. State, — So. 3d —, 2022 Miss. LEXIS 69 (Miss. Mar. 8, 2022).

Appellant's post-conviction collateral relief motion was procedurally barred as a successive motion with no exceptions because appellant was not innocent of the alleged crimes that resulted in his post-release supervision being revoked; there was a sufficient showing that he more likely than not committed the crimes based on the investigator's testimony, the investigation, and through documentation of appellant's text and Facebook messages Britton v. State, 313 So. 3d 1056, 2021 Miss. App. LEXIS 124 (Miss. Ct. App. 2021).

Appellant's post-conviction collateral relief motion was procedurally barred as a successive motion with no exceptions because appellant's due process rights were not violated when his phone was seized; the record supported an investigator's search warrant affidavit, which stated that appellant had been inappropriately texting minor children. Britton v. State, 313 So. 3d 1056, 2021 Miss. App. LEXIS 124 (Miss. Ct. App. 2021).

15. Double jeopardy.

Circuit court properly dismissed the postconviction relief petition because there was no double jeopardy violation since the State presented multiple disks and devices that each individually warranted a charge of child exploitation. Also, appellant admitted that he possessed and transmitted multiple images of children, he pled guilty to multiple charges of child exploitation during his plea colloquy, and he did not raise an issue or demonstrate confusion with the charges being presented against him at the time of his plea. Bevalaque v. State, — So. 3d —, 2022 Miss. App. LEXIS 126 (Miss. Ct. App. Apr. 26, 2022).

§ 99-39-7. Filing motion in trial court; filing motion to proceed in trial court with supreme court.

JUDICIAL DECISIONS

ANALYSIS

4. Ineffective assistance of counsel.
6. Jurisdiction.

4. Ineffective assistance of counsel.

Postconviction relief petition was denied because did not receive ineffective assistance of counsel. The purported meager mitigating evidence presented at trial was less of function of trial counsel's deficient performance than a product of its nonexistence and counsel did not fail to communicate a plea offer because petitioner's trial counsel and the State made multiple representations to the trial court that there was no plea offer. Evans v. State, 294 So. 3d 1152, 2020 Miss. LEXIS 72 (Miss. 2020).

6. Jurisdiction.

Appellant's filings for an order to show cause were successive motions for post-conviction relief, and thus, the circuit court lacked jurisdiction to consider them; because appellant pleaded guilty and could not directly appeal his convictions and sentences, the supreme court would not have jurisdiction to consider any applications for leave to proceed in the trial court. Nance v. State, 327 So. 3d 1089, 2021 Miss. App. LEXIS 389 (Miss. Ct. App. 2021).

Circuit court lacked jurisdiction over defendant's petition, which was a pleading cognizable under the Uniform Post-Conviction Collateral Relief Act because defendant was required to seek the Mississippi Supreme Court's leave to proceed on his request for PCR in the circuit court, but the Supreme Court denied defendant's January 2019 application for leave to proceed with his PCR motion in the circuit court, and he had not filed an application with the Supreme Court since that time. Greer v. State, — So. 3d —, 2021 Miss. App. LEXIS 408 (Miss. Ct. App. Oct. 5, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 112 (Miss. 2022).

§ 99-39-11. Judicial examination of original motion; dismissal; filing answer; court ordered testing of biological evidence.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Ineffective assistance of counsel.
6. Evidentiary hearing.
12. Dismissal.

1. In general.

Circuit court did not err in failing to require the State to file a written response to the postconviction collateral relief motion where the successor judge ultimately required the State to appear for a hearing. Porras v. State, — So. 3d —, 2022 Miss. App. LEXIS 120 (Miss. Ct. App. Apr. 19, 2022).

2. Ineffective assistance of counsel.

Circuit court properly dismissed defendant's motion for post-conviction relief because the defense attorney's failure to object to the indictment did not constitute ineffective assistance of counsel; the voyeurism statute did not require that the person be a "male"; the indictment properly tracked the language of the statute, included the essential elements of voyeurism, and sufficiently informed defendant of the charges against him. Parks v. State, 326 So. 3d 505, 2021 Miss. App. LEXIS 361 (Miss. Ct. App. 2021).

Circuit court properly dismissed defendant's motion for post-conviction relief because defendant did not establish that

counsel failed to conduct any pre-trial investigation; beyond vague assertions, defendant did not substantiated his claim with any supporting affidavits or facts. Parks v. State, 326 So. 3d 505, 2021 Miss. App. LEXIS 361 (Miss. Ct. App. 2021).

Circuit court properly dismissed defendant's motion for post-conviction relief because defendant did not plead any specific facts demonstrating any deficiency by counsel for failing to argue the violation of his right to a speedy trial; there were three agreed orders of continuance. Parks v. State, 326 So. 3d 505, 2021 Miss. App. LEXIS 361 (Miss. Ct. App. 2021).

6. Evidentiary hearing.

Trial court properly dismissed an inmate's PCR motion for lack of jurisdiction because the trial court did not have jurisdiction to review the revocation of the inmate's parole imposed on him by another county's circuit court, and the inmate failed to provide an adequate record for evaluation of his ineffective assistance claim. Jiles v. State, — So. 3d —, 2022 Miss. App. LEXIS 23 (Miss. Ct. App. Jan. 18, 2022).

Because the circuit court judge plainly stated that she reviewed appellant's post-conviction collateral relief motion and authorities, as well as the transcript from the plea proceeding, prior to issuing her ruling, there were no "extraordinary circumstances" present that would have necessitated an evidentiary hearing. Watson v. State, — So. 3d —, 2021 Miss. App. LEXIS 420 (Miss. Ct. App. Oct. 12, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 123 (Miss. 2022).

Trial court did not err by denying defendant's postconviction collateral relief motion without an evidentiary hearing because a review of defendant's indictment, signed plea petition, and sworn colloquy provided the trial court with ample evidence to determine that his motion lacked merit. Carter v. State, 313 So. 3d 495, 2020 Miss. App. LEXIS 118 (Miss. Ct. App. 2020), cert. denied, 312 So. 3d 729, 2021 Miss. LEXIS 81 (Miss. 2021).

12. Dismissal.

Trial court properly dismissed an inmate's PCR motion for lack of jurisdiction because the trial court did not have jurisdiction to review the revocation of the inmate's parole imposed on him by another county's circuit court, and the inmate failed to provide an adequate record for evaluation of his ineffective assistance claim. Jiles v. State, — So. 3d —, 2022 Miss. App. LEXIS 23 (Miss. Ct. App. Jan. 18, 2022).

§ 99-39-19. Evidentiary hearing; summary judgment.

JUDICIAL DECISIONS

6. Procedure.

Lower court's failure to provide an evidentiary hearing was not error where the submitted transcript revealed no coercion to plead guilty. Crockett v. State, 334 So. 3d 1232, 2022 Miss. App. LEXIS 77 (Miss. Ct. App. 2022).

§ 99-39-21. Procedural waiver of objections, defenses, claims; collateral estoppel; res judicata; burden of proof.

JUDICIAL DECISIONS

3. Procedural bar.

Petitioner's post-conviction claims were procedurally barred because the motion was filed outside the one-year filing period, the motion was subject to the successive writ bar, petitioner was prohibited by res judicata from raising claims that had been addressed already in prior proceedings, and he waived claims and issues that were not previously raised, and no excep-

tion to those procedural bars applied. Knox v. State, — So. 3d —, 2022 Miss. LEXIS 69 (Miss. Mar. 8, 2022).

§ 99-39-23. Conduct of evidentiary hearing; right to counsel; finality of order as bar to subsequent motions; burden of proof; appointment of postconviction counsel in death penalty cases.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidentiary hearing, generally.
3. —Advising defendant of rights upon guilty plea.
8. Successive writ.
11. Relief denied.

1. In general.

Defendant's conviction for armed robbery was reversed because the post conviction court failed to address all the issues and evidence presented by erroneously concluding that testimony of another's confessions were inadmissible at a new trial and by not addressing defendant's Brady violation challenge. Hughes v. State, 309 So. 3d 542, 2020 Miss. App. LEXIS 40 (Miss. Ct. App. 2020).

2. Evidentiary hearing, generally.

Circuit court's decision to deny postconviction relief was not clearly erroneous because there was no evidence appellant attempted to exercise his right to present witness testimony at the evidentiary hearing; thus, the circuit court did not err by refusing to allow appellant to present witness testimony at the evidentiary hearing. Magee v. State, — So. 3d —, 2021 Miss. App. LEXIS 386 (Miss. Ct. App. Sept. 21, 2021).

There was no abuse of discretion in denying appellant's motion for a continuance pending appointment of counsel for the evidentiary hearing because the record failed to reflect a need for appointment of counsel. Magee v. State, — So. 3d —, 2021 Miss. App. LEXIS 386 (Miss. Ct. App. Sept. 21, 2021).

3. —Advising defendant of rights upon guilty plea.

Circuit court's decision to deny postconviction relief was not clearly erroneous because while the circuit court could have erred by stating that what appellant was told by his attorney was none of the circuit court's business, any failure to address the claim was not reversible error; in its written order, the circuit court stated the record reflected that appellant was questioned thoroughly as to whether he understood his rights and all implications of the plea and sentencing proceedings. Magee v. State, — So. 3d —, 2021 Miss. App. LEXIS 386 (Miss. Ct. App. Sept. 21, 2021).

8. Successive writ.

Petitioner's 2019 postconviction relief (PCR) motion was untimely because it was filed over eight years after his conviction. Further, because it was a successive motion and was based on grounds for relief that the appellate court had previously denied, his motion was successive-writ barred and precluded by the doctrine of res judicata. Davis v. State, — So. 3d —, 2022 Miss. App. LEXIS 91 (Miss. Ct. App. Mar. 22, 2022).

Appellant's filings for an order to show cause were successive motions for postconviction relief, and thus, the circuit court lacked jurisdiction to consider them; because appellant pleaded guilty and could not directly appeal his convictions and sentences, the supreme court would not have jurisdiction to consider any applications for leave to proceed in the trial court. Nance v. State, 327 So. 3d 1089, 2021 Miss. App. LEXIS 389 (Miss. Ct. App. 2021).

Circuit court properly denied defendant's second motion for post-conviction

relief without holding an evidentiary hearing based on the successive-motions bar and the statute of limitations of the Uniform Post-Conviction Collateral Relief Act because the record revealed no reason why defendant was prevented from timely asserting his claim for ineffective assistance of counsel, his claim did not involve any exceptional or extraordinary circumstances, and the Equal Protection Clause was not violated by enforcing a post-conviction statute of limitations that applied equally to all defendants. Smith v. State, 334 So. 3d 1199, 2021 Miss. App. LEXIS 394 (Miss. Ct. App. 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 86 (Miss. 2022).

11. Relief denied.

Defendant failed to show why he could not have obtained the 911 recording prior to pleading guilty, and he could not meet his burden of showing that his second post-conviction relief motion was excepted from the statutory bar on successive motions; defendant was not entitled to an evidentiary hearing because his motion was subject to the successive-motions bar, and denial of a speedy trial was not reversible error on its own in Mississippi. Ford v. State, — So. 3d —, 2022 Miss. App. LEXIS 113 (Miss. Ct. App. Apr. 5, 2022).

Circuit court did not err in denying petitioner's motion for appointment of counsel to represent him at the postconviction collateral relief (PCR) hearing where he had not provided any explanation for why he needed counsel in his motion for appointment of counsel. Porras v. State, — So. 3d —, 2022 Miss. App. LEXIS 120 (Miss. Ct. App. Apr. 19, 2022).

§ 99-39-27. Application to Supreme Court for leave to proceed in trial court; grant of relief; dismissal or denial as res judicata.

JUDICIAL DECISIONS

2. Dismissal or denial of application.

Petitioner's post-conviction claims were procedurally barred because the motion was filed outside the one-year filing period, the motion was subject to the successive writ bar, petitioner was prohibited by res judicata from raising claims that had been addressed already in prior proceedings, and he waived claims and issues that were not previously raised, and no exception to those procedural bars applied. Knox v. State, — So. 3d —, 2022 Miss. LEXIS 69 (Miss. Mar. 8, 2022).